



STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY

New Jersey's Open Space Preservation Programs: A Review of County Grants Under the Farmland Preservation Program

A Program Review for Attorney General John J. Farmer, Jr.
by
The Office of the Inspector General

Edward M. Neafsey, ADAG
Inspector General

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STATEMENT OF THE INSPECTOR GENERAL

New Jersey has long been committed to preserving its open space. Since it began in 1961, New Jersey's Green Acres Program, under which land is purchased and conserved for public purposes, has received broad support in voter-endorsed bond issues. The Farmland Preservation Program, under which the State preserves farms by purchasing easements to prohibit the farmland from being developed for any nonagricultural purpose, has also enjoyed widespread public support since its inception in 1981. In 1998, New Jersey voters overwhelmingly endorsed a constitutional amendment which provided one billion dollars in stable funding for open space programs. The tax monies allocated for open space preservation, together with income from bond sales, will amount to approximately \$1.6 billion over ten years.

In recent months, however, allegations have been made of ethical violations on the part of some persons involved with the sale of development rights under the Farmland Preservation Program, and questions have been raised regarding whether the prices being paid for the land's development rights are justified by the quality of the land. These criticisms brought unfavorable attention to the Farmland Preservation Program and, if unaddressed, could erode public confidence and support for New Jersey's open space initiative and the expenditure of more than one billion dollars. For this reason, Attorney General John J. Farmer, Jr., requested that the Office of the Inspector General (OIG) conduct a program review of the operation of New Jersey's open space programs to determine whether conflicts of interest or corruption were undermining their integrity, and to recommend any changes that may improve their operation.

OIG's program review consisted, *inter alia*, of analysis of applicable laws, interviews with persons knowledgeable about the Green Acres and Farmland Preservation Programs and review of transactions under the Farmland Preservation Program. OIG interviewed the Chair and the Executive Director of the Garden State Preservation Trust (GSPT), the entity responsible for

overseeing open space expenditures. To evaluate the Farmland Preservation Program, OIG interviewed approximately 85 people, including farmers and other members of the County Agriculture Development Boards (CADBs) across the State. In addition, OIG selected approximately 100 purchases of farmland development easements for examination. Throughout OIG's program review, the patient and complete assistance of the State Agriculture Development Committee (SADC) staff, including its Executive Director Gregory Romano, Esq., was invaluable.

In every government program involving a large expenditure of funds, the opportunity for possible fraud, waste or abuse of taxpayer monies exists. Generally, under the Green Acres Program, the public through its government acquires title to land and, as the owner, ensures that the land is used for the purposes for which it was purchased: public recreation or conservation. The purpose of the Farmland Preservation Program, as embodied in the State Constitution and statutes, is to continue the viability of agriculture as an industry in New Jersey. It is for this purpose that the State purchases development easements on farmland. While the owner of the property agrees not to further develop the land, the land remains privately owned and can be restricted from public use. In the Green Acres Program, the public obtains something of tangible value for the expenditure of public monies -- the land, to use for recreation or conservation purposes. In the Farmland Preservation Program, the public also obtains value because the State prohibits further development of land, thereby preserving the land's agricultural potential and contributing positively to New Jersey's environment. However, the State cannot control the degree, if any, to which that land will directly contribute to the industry of agriculture. Thus, when the State purchases a development easement on farmland, the State remains dependent on the future actions undertaken by that land's owner to achieve its constitutional goal of preserving agriculture as an industry.

When the land remains a working farm, the public benefits significantly and directly by having agriculture succeed as an industry in New Jersey, resulting in economic benefits to the State,

and providing the population with such items as locally grown fresh produce and landscape plants. If, however, the owner maintains his land without further development, but essentially removes it from agriculture, the presently existing public use is best described as the enjoyment of an open space vista, and the State has not yet received what it spent those public monies to obtain -- *i.e.*, maintaining the viability of the industry of agriculture. Because the State's receipt of the full benefit of its investment is subject to the landowner's conduct, and is, therefore, qualified, I directed OIG staff to concentrate its review on easement purchases under the Farmland Preservation Program.

Regardless of whether the land remains a working farm, municipalities may reap an indirect economic benefit by avoiding costs associated with development, such as the costs of constructing and maintaining additional infrastructure or schools, and providing additional police, fire and other services. Halting development of open space in the nation's most densely populated state is a salutary goal, but it cannot be pursued at any cost. The public's money must be spent not just prudently, but also consistently with the constitutional and voter-approved public policy goals of preserving farmland *and* of sustaining agriculture as an industry. Failure to do so may lead to an erosion of public support and confidence in the State's open space preservation efforts and also cause the State to fall far short of reaching its overall numerical goal of preserving one million acres of open space.

The Report that follows details OIG's findings and recommendations concerning the farmland easement purchase program. Because OIG did not review individual Green Acres transactions, it makes no findings or recommendations pertaining to that program. OIG concludes that the Farmland Preservation Program is well operated and contains substantial checks and controls, as is appropriate for an expenditure this large. In short, the program deserves the strong public support it has received to date. However, in its review, OIG uncovered three farmland easement sales which raised concerns. This indicates that the existing review mechanisms should

be enhanced. One deal involves an apparent violation of the Local Government Ethics Law. OIG will complete its investigation of this matter and refer it to the Division of Local Government Services in the Department of Community Affairs, for their determination under the Local Government Ethics Law. Similarly, the other two deals are matters that OIG will investigate to determine if further action is necessary. OIG concludes that the Local Government Ethics Law should be given teeth by legislation that increases existing civil penalties, and that subjects purposeful or knowing violators to criminal penalties. OIG also recommends that farmland preservation applicants, who have a familial or business relationship with a CADB member, apply directly to the SADC, rather than the CADB. OIG believes these suggestions will serve to complement existing ethical guidelines and ensure that farmland preservation transactions remain above reproach.

OIG further recommends that there be open access to all documents detailing the quality of the land purchased and how the purchase price was reached. This will instill greater public confidence in New Jersey's open space preservation efforts. These documents should be made public at the earliest time which would not jeopardize the negotiation of an individual transaction, that is, as soon as the parties have reached a written agreement on the sale price of a development easement. The SADC already does so. When the CADBs are the direct purchaser of development easements, they must also do so. In addition, the SADC should complete its tracking of all prior land purchases by lot and block number as soon as practical, so that all land transfers can be more readily traced by the public.

With the improved funding provided by the constitutional amendment, competition among those seeking to enter the Farmland Preservation Program during 1999 and 2000 decreased. In those years the State could fund virtually all farmland preservation applicants. The increased availability of funding, the dwindling supply of farmland and the pressure to fulfill the State's goal of preserving

500,000 acres of farmland -- one half of the overall goal of one million acres of open space -- present a danger that the costs of State purchases of farmland easements will rise precipitously. Indeed, there are now indications that this may be occurring. For example, since 1999, some easement purchase prices in Burlington, Cape May and Middlesex Counties have been dramatically higher than the county norm. If this were to become a trend, public funding earmarked for protecting open space would run dry long before the State achieves its open space preservation goal.

As the State increases its efforts to serve the public interest by preserving New Jersey's dwindling open space, the State must correspondingly increase its vigilance to assure that the public funds expended to preserve private lands are spent wisely and that appropriate value is received. In its first report to Governor Christine Todd Whitman and the Legislature, issued in July 2000, the GSPT detailed New Jersey's substantial progress to date in preserving open space. The GSPT also recommended a quicker approval process for projects threatened by imminent development. The threat of rampant development may explain the high per acre price of some properties preserved under the Farmland Preservation Program. On the other hand, the high prices may be due to other factors that the State can control by more careful review before approval. Regardless of the cause, the increased costs are themselves a concern because, over the long term, they can undermine State open space efforts and lessen public support for open space preservation. OIG believes that increased costs for development easements on farmland impose an obligation on the State to more vigorously scrutinize deals. Better review, not just faster review, is necessary.

The GSPT has the statutory responsibility to refer individual transactions to lawmakers for legislative approval, as well as the statutory responsibility to keep lawmakers apprised of the State's progress toward achieving the goal of preserving one million acres of open space. Therefore, OIG recommends that the GSPT more closely review the individual transactions it advises the Legislature

to fund, in order to ensure that true value is being received for the money expended on each transaction. The GSPT should continue to track the costs of State purchased easements as the program moves into its later years, and to recommend legislative changes that will make open space purchases more cost effective and ensure the success of New Jersey's open space efforts. For example, if the cost of buying some farmland preservation easements reaches a point in the future at which the expense is not a smart open space investment for the State, consideration should be given to changing the percentages of monies spent yearly on Green Acres transactions and Farmland Preservation transactions. As the open space initiative matures over the course of the next eight years, the GSPT must continually assess the State's success in meeting both its policy goal and its numerical goal. This is part of the purpose in having the expenditures administered by the GSPT, and it is the GSPT's statutory responsibility.

Just the first two years of experience under the open space initiative indicate that a new dynamic is in play. For example, in the 1998 funding round, before the initiative, 59 of the 67 owners of farms accepted into the Farmland Preservation Program discounted their asking price for an easement on their land, in order to increase their chances of being accepted. One owner discounted the easement price a substantial 47.33 percent. By the 2000B funding round, with the new initiative in place, only a single owner, Raritan Township, discounted the easement value on its land, and the discount was only 6.38 percent. Over the ten year life of the expenditures, the program will continually evolve, particularly as available farmland becomes more scarce, thus necessitating regular government reassessment in order to ensure that the State gets the best bang for its open space buck. Finally, the GSPT must request that the Legislature provide them the resources and tools they need to do their job both efficiently and effectively.

Under current law, the most decisive factor in determining whether the public receives value

for its money is the accuracy and quality of two required county-level appraisals. Conducting an appraisal is an art rather than a science and, in determining a property's value, an appraiser renders an expert opinion that is based on a subjective evaluation of comparable properties. An expert opinion that ascribes a higher appraisal value to a development easement benefits the seller at the expense of the taxpayer. Yet the State, as the main supplier of the money, has a limited role in the appraisal process. That is, the law only permits the State's review appraiser to certify a value within the range established by the two appraisers hired at the county level. The State review appraiser cannot reject one or both of the two initial appraisals, even if he or she strongly disagrees with the conclusion, unless there was a failure to comply with the State appraisal handbook or professional standards. While the appraisers must be selected from a State certified list, they are hired by the county, view the county as their client and often refuse to communicate directly with the State review appraiser. Since appraisals are the key to determining how much money is spent on each purchase and to ensuring that taxpayers get proper value for their money, OIG recommends that the SADC directly select and hire appraisers and increase the role of SADC staff appraisers. This will require the State to pay the appraisal costs presently shared with the counties, which will, therefore, increase State costs. However, the credibility of open space spending depends on the credibility of the appraisals. OIG believes it is prudent to spend extra money up front in order to protect the hundreds of millions of dollars the State will expend on farmland.

As previously indicated, OIG concludes that New Jersey's open space preservation programs, as administered by the GSPT, are well run and contain substantial checks and balances on expenditures. Indeed, the Green Acres and Farmland Preservation Programs are national models. Yet, in this Report, OIG makes concrete recommendations it believes will strengthen the State's open space preservation efforts. The most telling evidence of the need to strengthen the Farmland Preservation Program is that, although the average statewide easement purchase price has remained

stable, some recent farmland easement deals cost the State so much money that, if such prices were to become the norm -- and it bears repeating that these prices are not the norm now -- the State would only be able to purchase far less than 100,000 acres of farmland during the remaining life of the ten year initiative. The role of the appraiser in determining appropriate easement prices is so critical in protecting State taxpayer dollars that the State Agriculture Development Committee needs to become more intimately involved in the appraisal process, as it is in direct State farmland purchases and as the DEP is in Green Acres purchases. Greater State involvement in the appraisal process better enables the State to avoid paying extravagant prices. The Farmland Preservation Program would be further improved if the GSPT enhanced its oversight of the individual transactions it recommends to the Legislature in order to ensure that the State achieves the public policy goals as set forth in the constitution and in statutory law. Finally, whenever the expenditure of public monies is involved, and particularly an expenditure of this magnitude, the highest ethics are in order.

With a sharp focus on assuring that the constitutional and statutory goals of the Farmland Preservation and Green Acres Programs are achieved, and a review process that ensures public monies are spent judiciously, New Jersey's open space preservation efforts should continue to receive the widespread public support they have justly received in the past. This focus will also sustain full public confidence that these programs continue to be implemented properly, fairly and with integrity, and ensure that the rich legacy of this billion dollar expenditure -- one million more acres of preserved open space -- will offer enjoyment and inspiration for all New Jerseyans, today and for generations to come.

Date: _____

Edward M. Neafsey
Inspector General

I. NEW JERSEY'S OPEN SPACE PRESERVATION PROGRAMS

A. Introduction

New Jersey, the most densely populated state in the nation, has long been a leader in attempts to preserve open space. Forty years ago, New Jersey's Department of Conservation and Economic Development issued a report detailing the need for the State to acquire recreational land and urging bold and immediate action "before it is too late."¹ That forward-looking report cautioned that "New Jersey should have an additional 500,000 acres of land set aside for state-owned recreational facilities by the year 2000. In view of the rate at which vacant lands are currently being developed, this additional amount of land should be secured on an accelerated acquisition program."² New Jersey officials and the public responded promptly, passing the first of many "Green Acres" bond issues the following year. That first bond issue authorized the sale of \$60 million in bonds with which to acquire lands "for recreation and conservation purposes."³

Two years later, in 1963, New Jersey took early steps to preserve farmland by passing a constitutional amendment permitting land used in agriculture or horticulture to be valued for property tax purposes as farmland. An owner of at least five acres devoted to farming use from

¹ See Land Use Committee, Dept. of Conservation & Economic Development, "The Need for a State Recreational Land Acquisition and Development Program: An Exploratory Report" (November 1960), at 2.

² *Id.*, *Land Use Committee Report*, at 14.

³ The original Green Acres bond issue passed resoundingly, by popular vote of 742,396 to 507,879. *Manual of the Legislature of New Jersey* (2000), at p. 918 (hereinafter *Legislative Manual*).

which at least \$500 in gross income was obtained, was eligible for lesser, preferential property taxes.⁴ *See N.J.S.A. 54:4-23.1 et seq.*

In 1971, 1974 and 1978, additional “Green Acres” bond issues were approved by the public, authorizing expenditures of \$80 million, \$200 million and \$200 million, respectively, to conserve open space.⁵ In 1981, the first bond issue devoted to purchasing development easements in order to preserve farmland was passed, authorizing \$50 million for that purpose. Additional “Green Acres” bond issues passed in 1983 and 1987, providing another \$170 million for the purchase of open space lands and \$65 million for historic preservation and cultural center projects.⁶

In 1989, the interests of “Green Acres” and farmland preservation were joined in a single \$300 million bond issue.⁷ These open space issues remained joined in 1992 with passage of a \$345 million bond issue,⁸ and when a \$340 million bond issue was subsequently approved in 1995.⁹ Finally, in 1998, a constitutional amendment was approved by the electorate, dedicating \$98 million annually in sales and use tax revenues from 1999 through 2009 to finance the acquisition of land for recreation and conservation purposes, and to preserve farmland and historic sites.¹⁰

⁴ Neither the minimum acreage nor the minimum income requirement has been altered since passage of the Farmland Assessment Act of 1964.

⁵ *Legislative Manual*, at pp. 920 and 922.

⁶ *Legislative Manual*, at pp. 923 and 925. *P.L. 1983, c. 354; P.L. 1987, c. 265.*

⁷ *P.L. 1989, c. 105. Legislative Manual*, at p. 926.

⁸ The bond issue was approved overwhelmingly by the public, with a vote of 1,782,132 to 681,247. *Legislative Manual*, at p. 927.

⁹ *Legislative Manual*, at p. 927.

¹⁰ Like previous bond issues supporting open space issues, the constitutional amendment to provide a stable source of funding for open space, farmland and historic preservation passed

The Garden State Preservation Trust was created to administer and oversee the expenditures. *N.J.S.A.* 13:8C-1 *et seq.* A goal of preserving one million acres of open space has been set, *N.J.S.A.* 13:8C-2, with half of the land, or 500,000 acres, to be farmland. When one recognizes that New Jersey, according to the 1997 Census of Agriculture, had only 832,600 acres of land in farms, one must realize that attempting to preserve 500,000 acres of that land through a voluntary program is a monumental undertaking. When one realizes that more than half of New Jersey farmers are over the age of 55, with a sixth of them over 70 years of age, and that less than five percent are under age 35,¹¹ it is apparent that New Jersey is not gaining nearly enough farmers for replacement purposes. See Table 1, following page. Indeed, New Jersey farmers interviewed by OIG staff uniformly expressed substantial concern that, because farming is a difficult occupation and better economic opportunities face the younger generation, New Jersey would not find another generation of farmers.¹²

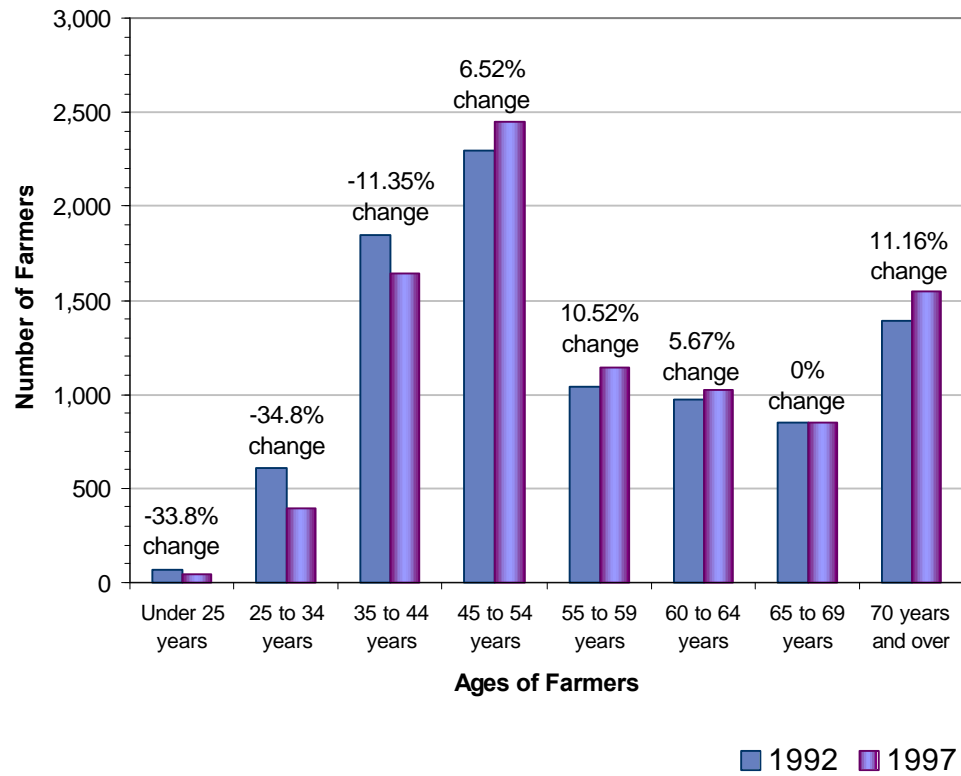
While preserving the land base for agriculture is an essential and appropriate first step, New Jersey's efforts to preserve farming may not ultimately succeed without equally focused efforts to support its full-time farmers. In July 1997, the State Agriculture Development Committee created the Farm Link Program in an attempt to address this problem. The Farm Link Program, which at the

easily. The amendment of Article VIII, § 2, par. 7 of the New Jersey Constitution was approved by the voters 978,686 to 498,010. *Legislative Manual*, at p. 928.

¹¹ United States Department of Agriculture, 1997 Census of Agriculture - County Data, Table 11.

¹² A doctor who had sold to the State a development easement on his land, and who was having an estate home constructed on an excepted area in the midst of that preserved land, opined that all New Jersey could hope to attract in the future were, as he put it, "white collar farmers" like himself. This easement purchase is reviewed in Appendix II of this Report.

Table 1: Farm Operators by Age Group



Source: USDA, National Agricultural Statistics Service, 1997 Census of Agriculture - County Data.

end of the most recent fiscal year had over 140 participants enrolled, seeks to match potential buyers of farms with potential sellers. The Farm Link Program is also being used to link owners of land with persons who wish to rent land to farm.

B. The Garden State Preservation Trust

Following passage of the constitutional amendment providing a stable source of funding for open space, farmland and historic preservation, the Legislature enacted the Garden State Preservation Trust Act, *L. 1999, c. 152* (codified at *N.J.S.A. 13:8C-1 et seq.*). In that Act, the Legislature detailed the public policy reasons for preserving open space, farmland and historic areas.

The Legislature found that acquisition and preservation of farmland protects and enhances the character and beauty of the State and that the farmland that is available will gradually disappear as the cost of preserving it correspondingly increases. The Legislature further found that agriculture plays an integral role in the prosperity and well-being of the State, and that it provides a fresh and abundant supply of food for its citizens. The Legislature found that much of the farmland in the State faces an imminent threat of permanent conversion to non-farm uses and that retention and development of an economically viable agricultural industry is a high public priority. *N.J.S.A. 13:8C-2*. The Legislature recognized the recommendations of the Governor's Council on New Jersey Outdoors, and agreed that it is a worthy goal to preserve one million more acres of open space and farmland in the next decade to protect the quality of life for New Jersey residents. The farmland to be preserved was defined as land which qualifies for differential property taxation pursuant to the Farmland Assessment Act of 1964, that is, at least five acres of land from which at least \$500 gross annual agricultural income is obtained. *N.J.S.A. 13:8C-3*.

The Legislature created the Garden State Preservation Trust (GSPT) to raise revenue for preservation, and delegated to the Trust such other duties and responsibilities as necessary to further the purposes of the constitutional amendment and to advance the policies and goals which the Legislature had set forth in the Act. The Trust is empowered to borrow money and issue bonds,

notes or other obligations, and to apply for grants from any public or private entity. *N.J.S.A.*

13:8C-6.

Pursuant to the Act, three trust funds are established -- one for Farmland Preservation funding, one for Green Acres funding and the third for Historic Preservation funding. *N.J.S.A.* 13:8C-19, 13:8C-20 and 13:8C-21. At least twice per fiscal year, the State Agriculture Development Committee (SADC) is required to submit a list of projects to the Trust which the SADC recommends be funded from Farmland Preservation Trust monies. The GSPT reviews this list of projects, and may make deletions from the list. The Trust may not add to the list. After the GSPT approves the list, the Trust submits proposed legislation appropriating moneys from the Farmland Preservation Trust Fund to pay for the projects on the list. The Legislature may approve one or more appropriations bills to fund the projects. A similar submission procedure is undertaken at least twice each fiscal year by the Department of Environmental Protection, which submits a list of Green Acres projects to the GSPT for review and approval. At least once each fiscal year, the New Jersey Historic Trust submits its list of recommended projects to the GSPT. The total combined amount funded in any fiscal year for Green Acres and Farmland Preservation, net of funding for the Historic Trust, may not exceed \$200,000,000. *N.J.S.A.* 13:8C-23.¹³

The GSPT is required to report every two years on the progress being made to achieve the

¹³ In fiscal year 2000, an expenditure of \$233 million was approved by the GSPT, the Legislature and the Governor. While the GSPT Act capped the annual appropriation for Green Acres and Farmland Preservation projects at \$200 million, in recognition of the demand for funds, the Act was amended to exempt from the cap any funds provided through loan repayment to the Green Acres Program and any federal funds awarded to the State for preservation purposes.

constitutional goals with respect to acquiring and developing land for recreation and conservation purposes, preserving farmland and preserving historic properties. The report is to include tabulations on the acreage totals conserved or preserved under each program, in the State as a whole, as well as in each county and municipality. Areas where projects are planned or most likely to occur are also to be reported. The Trust is also to provide “recommendations with respect to any legislative, administrative, or local action to assure that these goals may be met in the future.” *N.J.S.A.* 13:8C-25.

In its first report, dated July 2000, the GSPT recommended that an expedited appropriation of funds be made for projects imminently threatened with development. The report also recommended that the SADC list the overall funding allocations and the farms to which the funding would be directed, without specific dollar amounts identified for each individual farm. The report observed that development proposals are often placed in direct competition with land preservation efforts, thus increasing the cost to preserve land. Accordingly, the report recommended that regulatory processes at all levels of government be structured and coordinated to comply with the State Development and Redevelopment Plan for “smart growth.”

C. The Green Acres Program

The Green Acres Program was created in 1961 to meet the State’s growing recreation and conservation needs. It is operated within and managed by the Department of Environmental Protection (DEP). Within that department, the Division of Fish & Wildlife and the Division of Parks and Forestry manage 67% of all public land preserved in New Jersey, with the remainder managed by counties and municipalities, the federal government and nonprofit organizations. Lands

purchased with Green Acres funds must be used solely for recreation and conservation purposes and public access or use is required.¹⁴ The Bureau of Legal Services and Stewardship within the DEP inspects and monitors such land to ensure that it is well maintained and accessible to the public.

Since passage of the constitutional amendment providing a stable source of funding for open space projects, Green Acres disbursements have been allocated 50% for State purposes, such as State parks and forests, 40% for county and local recipients, and 10% for non-profit organizations. In selecting which projects to fund through the Green Acres Program, the DEP assigns “priority points” to each acquisition project. The priority points serve as a rating system for the value of the projects. The protocol for assigning priority points is established by regulation. *See N.J.A.C. 7:36-7.1*. Out of a maximum possible 133 priority points, up to 35 points may be assigned based on the extent to which a project satisfies the need for open space for recreation in a particular area. *N.J.A.C. 7:36-7.1(b)1*. In evaluating a particular county’s need for recreation, the Green Acres Program considers the number of acres of land currently preserved compared with the population dependent on that land. The goal for a municipality is that at least three percent of the developed and developable area should be held as open space for recreation; the goal for a county is a minimum of seven percent.

A maximum of 30 priority points may be assigned based on the extent to which a project meets environmental protection goals. *N.J.A.C. 7:36-7.1(b)2*. Environmental goals include protecting coastal or watershed areas, protecting wildlife habitat, protecting threatened or endangered species, enhancing or preserving critical environmental sites (such as wetlands, beaches, dunes and

¹⁴ Lands purchased in fee with Green Acres funds require public access unless the Commissioner of DEP determines that such access would be detrimental to the land or a natural resource. *N.J.A.C. 7:36-4.3(a)1*. The Green Acres Program can also acquire conservation easements to protect vistas and viewsheds as part of larger land preservation projects where public access occurs on adjacent land. *N.J.A.C. 7:36-4.7*.

forests), adding to or linking other areas of public recreation or open space and supporting regional open space or conservation initiatives.

A maximum of 24 priority points may be assigned to a project based on its overall quality. *N.J.A.C. 7:36-7.1(b)5*. In evaluating the overall quality of a project, its accessibility to population centers and its potential for recreation development, and for providing public access to waterways, are considered. Part of the quality evaluation of a project includes an assessment of its cost effectiveness. In determining whether a project is cost-effective, the quality of its conservation or recreation opportunities is weighed against the anticipated cost of the project.

A maximum of 15 points may be assigned based on the extent to which a project meets historic preservation goals. *N.J.A.C. 7:36-7.1(b)3*. Up to ten priority points may be assigned based on the extent of public involvement and support of the project and its consistency with the State Plan or the Pinelands Comprehensive Management Plan. *N.J.A.C. 7:36-7.1(b)4*. A project which incorporates such items as private investment or ecotourism potential, waterfront development or redevelopment, greenways, trails or bike paths, historic or archaeological resource preservation, recreational programming, open play areas or private donation of land, equipment, labor or funds may be assigned up to an additional nine priority points.

A project undertaken by a municipality or county which has not previously received Green Acres funding will earn an additional five points. *N.J.A.C. 7:36-7.1(b)7*. Finally, up to an additional five points may be assigned to a project for which a donation exceeds 25% of the eligible land cost. *N.J.A.C. 7:36-7.1(b)8*. After determining the priority points assigned to each project, the DEP ranks the projects according to the total number of priority points assigned to each project.

When a municipality or county applies for Green Acres funding to purchase land with an estimated value of less than \$250,000, the municipality or county must obtain at least one appraisal, although it may obtain two. If the estimated land value of a parcel is \$250,000 or more, the municipality or county must obtain two appraisals. The appraisers used by the municipality or county must be selected from the list of State-certified appraisers.¹⁵ *N.J.A.C. 7:36-6.6*. Ordinarily a DEP staff appraiser and a Green Acres planner meet with each applicant to express the program's guidelines for hiring and conducting appraisals before the appraiser is hired. This communication is followed up with an on-site meeting between the Green Acres appraisal staff, the applicant and the contracted appraisers to give additional and more specific instructions on how appraisals of the subject property should be conducted.

After receipt of the contracted appraisals, the Green Acres Program then certifies the market value of the parcel. To do so, Green Acres reviews the appraisals, inspects the project site, examines the comparable sales used by each appraisal and reviews any other data relevant to the market value estimated by the appraisers. The Green Acres Program determines the sufficiency of the appraisals submitted and notifies the municipality or county of any deficiencies which prevent a determination of "eligible land cost," the value on which the State's share of funding for the project is based. If one appraisal was obtained, the eligible land cost is the certified market value. If two appraisals were obtained and the difference between the values in each is greater than 10 percent, the eligible land cost is the certified market value. If two appraisals were obtained and the difference between the two appraisals is 10 percent or less, the eligible land cost is the average of the appraisal values. It is the

¹⁵ Acquisitions by nonprofit organizations which seek Green Acres funds have similar requirements. *N.J.A.C. 7:36-16.6*.

policy of the Green Acres Program to pay no more than the market value for a property. In rare cases, however, the program will pay slightly above market value for properties deemed to be of critical concern, in order to reach an agreement on price with the seller and avoid the expense of lengthy condemnation proceedings.

The Green Acres Program conducted a review and reform of its application process in 1997.¹⁶ At that time, DEP determined that one of the most difficult, yet most important, aspects of the Green Acres process was assuring that the prices paid for land are appropriate.¹⁷ The DEP staff members administering the program recognized that the public interest would be served by the program's determining value in a fair and impartial manner, and by its policy of acquiring property at no more than market value. The DEP Green Acres team worked to streamline the time frame of the process without sacrificing the integrity of appraisals. As part of the reform, DEP set out to establish a database of comparable sales. For better efficiency, the report indicated that reviews of appraisals would be grouped geographically. OIG is advised that the entire acquisition process, from initiation of application to culmination, now takes about 18 months to complete.

Green Acres informs the SADC of every offer made to it under the State acquisition program and the SADC has the opportunity to identify and possibly acquire parcels offered to Green Acres pursuant to that program which may have greater value for farmland preservation. *See N.J.A.C. 7:36-4.6.* Thus, if an offer is made to sell to Green Acres land which is valuable for agricultural

¹⁶ "Greener Acres... Making a Good Thing Better," Green Acres Process Team (September 1, 1997).

¹⁷ *Id.*, at 11.

purposes, the SADC may purchase the land, impose a development easement on the property, and then sell it to an interested purchaser as preserved farmland. The Deputy Administrator of the Green Acres Program represents the DEP Commissioner on the SADC and is familiar with the land purchases being made under the Farmland Preservation Program. Because of this coordination, a prospective recipient of open space funds may not be able to pit the Green Acres Program against the Farmland Preservation Program. Additional and complete coordination between the programs is still a goal, particularly with regard to local Green Acres acquisitions about which the SADC generally remains uninformed, although the Green Acres Program and SADC have worked together on some cost-sharing projects in which both have an interest.¹⁸

D. The Farmland Preservation Program

1. The Public Benefits of Supporting Private Land Owners

The Natural Resources Conservation Service has noted that, by the end of the Twentieth Century our relationship to the land had changed.¹⁹ Today, few people live or work on farms or work in occupations that support those working the land. Rather, far more people live in cities and suburbs. In leaving the land, many of us have lost what author Wallace Stegner²⁰ called our “sense

¹⁸ Land acquisition from the Blazing Star Realty Corporation, discussed in Appendix II, is one such cooperative project.

¹⁹ “America’s Private Land, A Geography of Hope,” Natural Resources Conservation Service, United States Department of Agriculture (June 1997), at 15.

²⁰ Wallace Stegner (1909-1993), Pulitzer Prize-winning author and historian, was an early conservationist who pressed for passage of the Wilderness Act of 1964. He served as assistant to the Secretary of the Interior in 1961 and was a member of the National Parks Advisory Board from 1962 to 1966, serving as its chairman from 1965 to 1966.

of place” -- that connection between ourselves and the natural world around us -- but none of us has lost our dependence on place in our need for food, water and aesthetic appreciation of the natural world. As most Americans today are far removed from any intimate connection with the land upon which they nevertheless depend, a willingness to provide economic support to those who manage the land has been on the rise. How farmlands are managed furnishes the key to maintaining healthy, stable landscapes and watersheds.²¹

In buying development easements under the Farmland Preservation Program, the State pays private land owners not to develop their land, but the land remains in private hands, and the owner may exclude public access. Nevertheless, the State Legislature, and indeed the public through its passage of the 1998 constitutional amendment, has determined that New Jersey has a strong interest in maintaining agriculture as an industry within our borders and in assuring that farming practices protect the quality of the State’s soils.

New Jersey agriculture generates almost \$700 million in annual sales²² and generates employment opportunities in production and support industries, food processing, marketing and transportation. Despite its small size and large population, New Jersey is nationally ranked in production of its agricultural products. New Jersey ranks number eight in the nation in the value of agricultural products sold directly to individuals for human consumption, number ten in the value of vegetables, sweet corn and melons sold, eleventh in the value of nursery and greenhouse crops,

²¹ “America’s Private Land, A Geography of Hope,” at 21.

²² USDA, 1997 Census of Agriculture - County Data, Table 2.

and thirteenth in the value of fruits and berries sold.²³ New Jersey is also nationally ranked in the amount of various agricultural products harvested. New Jersey ranks thirteenth in the overall amount of vegetables harvested for sale, including fourth among states in the amount of lettuce and romaine, eleventh in green peas harvested, twelfth in both sweet corn and cucumbers/pickles and fourteenth in snap beans.²⁴ New Jersey also is nationally ranked in the amount of cranberries, peaches and tomatoes which it produces.²⁵ Agricultural land in general has been demonstrated to be economically beneficial in that it generates more in tax revenues than it costs in services, thus generating a net income to local communities.²⁶ New Jersey farmland generates indirect additional public benefits in providing wildlife habitat and in helping to protect water quality and other natural resources.²⁷

As a nation, our economic and environmental well-being depends on privately owned “working land.” Approximately 70 percent of the continental United States is held in private ownership, and fifty percent of the country, 907 million acres, is cropland, pastureland and

²³ 1997 Census of Agriculture, respectively, Table 24, Table 33, Table 35 and Table 34.

²⁴ *Id.*, respectively, Tables 71, 85, 75, 76, 73 and 72.

²⁵ *Id.*, respectively, Tables 34, 85 and 77.

²⁶ Sorensen, A. Ann *et al.*, *Living on the Edge: The Costs and Risks of Scatter Development*, American Farmland Trust (1999). *See also, e.g.*, Burchell, Robert W., *et al.*, *New Practitioner’s Guide to Fiscal Impact Analysis*, Rutgers University, Center for Urban Policy Research (1985). Thomas, Holly L., “The Economic Benefits of Land Conservation,” Technical Memo of the Dutchess County Planning Department, Dutchess County, New York (1991). “Economic Benefits of Open Space,” *Public Finance Digest*, Government Finance Group, Inc. (September 1993). Senf, David, “Farmland and the Tax Bill: The Cost of Community Services in Three Minnesota Towns,” American Farmland Trust (1994). Esseks, J. Dixon, *et al.*, “Fiscal Costs and Public Safety Risks of Low-Density Residential Development on Farmland: Findings from Three Diverse Locations on the Urban Fringe of the Chicago Metro Area,” American Farmland Trust (1999).

²⁷ *See, e.g.*, Mitchell, Alison E., *Gaining Ground: Preserving New Jersey Farmland Through Effective Tax Policy*, New Jersey Conservation Foundation (1999), at 11.

rangeland, owned and managed by farmers and ranchers.²⁸ The national responsibility for stewardship of this land lies in the control of approximately 4.7 million individuals. This means that the care of half of our national land is in the hands of less than two percent of our citizens. The situation in New Jersey is even more marked, where only about one-tenth of one percent of our population owns New Jersey's 832,600 acres of farmland: New Jersey, which has a population of more than 8 million,²⁹ has only a little more than 9,000 farmers. Public monies can buy and tend only limited quantities of our national and State lands. Our individual futures, including our reliance on food and clean water,³⁰ is thus dependent on how private land owners control and minister their holdings.

It has been said that the next great environmental goal will be to conserve our private land and that, to achieve this goal, we must accept stewardship of private land as a shared responsibility between public and private interests.³¹ Public funds carefully spent for private land conservation can

²⁸ "America's Private Land, A Geography of Hope," Natural Resources Conservation Service, United States Department of Agriculture (June 1997), at 7.

²⁹ U.S. Census Bureau 1999 estimate of New Jersey population: 8,143,412.

³⁰ Farmland not only is the source of our food supply, but, when properly managed, also contributes to our having clean water to drink. Rainwater falls on the land and then either percolates through to the groundwater, runs over the land's surface to a stream or lake, or moves laterally through the soil to a surface body of water. Whichever route the water takes, the quality of the soil, including such properties as its texture, structure, water-holding capacity, porosity, organic matter content and its depth, largely determines the water's chemical and biological characteristics and flow dynamics. "America's Private Land, A Geography of Hope," at 16-17.

³¹ *Id.*, former Secretary of Agriculture Dan Glickman, preface to "America's Private Land, A Geography of Hope." Former Secretary Glickman goes on to point out that "Soil erosion exceeds the level at which agricultural production can be sustained on some soils, and urban and suburban growth continues to exacerbate the competition for water in many parts of the country. Elsewhere the protection of biological diversity requires attention. Drinking water quality problems persist at certain locations as well.... Fifty years from now, few will remember

be one of our nation's, and our State's, best investments, because it is capable of achieving multiple conservation benefits from relatively modest expenditures.³² New Jersey's Farmland Tax Assessment and Farmland Preservation Program were each developed in recognition of the need to assist private land owners in maintaining land in a manner beneficial to all citizens.

2. Historical Overview of Farmland Preservation

Since 1963 New Jersey has been in the business of trying to protect its remaining farmland. In that year, New Jersey determined that, where at least five acres of land are actively devoted to agricultural or horticultural use, the land may be valued at its agricultural or horticultural value for tax purposes.³³ The Farmland Assessment Act of 1964, *N.J.S.A.* 54:4-23.1 *et seq.*, was designed to reduce the property tax burden for farmers. The New Jersey Farm Bureau, a non-governmental association of farmers, suggests that the lesser tax assessment for farmland is probably the most important reason that the loss of farmland in New Jersey slowed dramatically after 1970.³⁴ The Bureau reports that 1.2 million acres receive that assessment now, with more than 500,000 acres of

the arcane details of the farm programs that have traditionally been the mainstay of this Department [of Agriculture]. People will, however, remember whether we had a commitment to preserve our natural resources to ensure the sustainability of our food supply.” *Id.*

³² *Id.*

³³ In 1963, New Jersey amended its Constitution to allow farmland to be assessed at its value for agricultural or horticultural use. *N.J. Const.* (1947), Art. VIII, §1, par. 1. New Jersey had previously enacted a law allowing farmland to be taxed at its agricultural value rather than at its value as a prospective subdivision. *See N.J.S.A.* 54:4-1. This provision of the tax code, however, was found by the Supreme Court in *Switz v. Kingsley*, 37 *N.J.* 566 (1962), to violate the New Jersey Constitution which, prior to its amendment in 1963, required all real property to be assessed for taxation under general laws and by uniform rules.

³⁴ “Farmland Assessment,” *2001 Policies*, New Jersey Farm Bureau.

that land being cropland.³⁵

Differential assessment helps ensure the economic viability of agriculture and helps protect the land base by making farming more financially profitable, which, in turn keeps land in farming. Differential tax assessments for farming help correct inequities in the property tax system by bringing farmers' property taxes in line with what it actually costs local governments to provide services.³⁶

In the 1980s, New Jersey intensified its efforts to save its farmland, by enacting a farmland preservation program through which the government purchases development easements on farmland. In 1981, the first New Jersey farmland preservation bond issue was approved,³⁷ authorizing the sale of \$50 million in bonds for the purpose of acquiring easements to preserve lands as farmlands. Under the easement purchase program, the government essentially pays to the landowner the difference between the value of the land for agricultural use and the value of the land for residential development.³⁸ In return, the landowner grants a development easement to the State. Landowners

³⁵ This 1.2 million acres of New Jersey farmland also includes, *inter alia*, pasture and appurtenant woodlands. It is noteworthy that 1.2 million acres of New Jersey land currently get the farmland tax assessment, and that the 1997 federal Census of Agriculture reported that New Jersey then had only 832,600 acres of land in farms. This difference in farmland acreage may be accounted for by the fact that the federal definition of a "farm" requires at least \$1,000 in annual farm income, while the New Jersey tax standard requires only \$500 in such income. Thus, the level of productivity of almost 370,000 acres taxed at the lesser rate for farmland in New Jersey was insufficient to qualify the acreage as a farm for USDA purposes.

³⁶ "The Farmland Protection Toolbox," Farmland Information Library, American Farmland Trust.

³⁷ The bond issue was approved 1,065,996 to 668,172. *Legislative Manual*, p. 923.

³⁸ The calculation of development easement values is discussed below under "The Appraisal Process" in the following section.

who sell a development easement to the government continue to privately own and use their land, retaining the rights to exclude the public and to sell their land or transfer it to their heirs. Such a landowner, however, can no longer develop his land, as the right to do so has been relinquished to the government.³⁹ Thus, while the easement limits development, it does not affect the landowner's other private property rights.

In 1983, the Legislature enacted the Agriculture Development and Retention Act, *N.J.S.A. 4:1C-11 et seq.*, to implement the preservation of farmlands authorized by passage of the bond issue. According to that 1983 Act, which created New Jersey's Farmland Preservation Program, the purpose of buying development easements was to strengthen the agricultural industry and preserve farmland, because agriculture was deemed to be important to the State's economy. To this end of preserving a viable agricultural industry, the State sought to preserve farmland within identified areas where agriculture would be the first priority use of the land. *N.J.S.A. 4:1C-12*. Those who sold the right to develop their farmland to the State, would, in addition to payment for that interest in their land, receive certain benefits, such as financial assistance on soil and water conservation projects to improve their farms.⁴⁰ In 1998, the State further bolstered its commitment to ensuring the viability

³⁹ The limitation on development permanently stays with the land even if it is later transferred to another through sale or bequest.

⁴⁰ This report focuses primarily on the program to purchase farm development rights through the county grant program. There are two permanent easement programs operated by the SADC. In one, the landowner may sell an easement directly to the SADC. In the other, referred to as the county grant program, the landowner applies to a County Agriculture Development Board, which evaluates the application and, if it approves the application, submits it to the SADC. If the SADC approves, it provides the CADB with a grant which, generally, covers 60 to 80 percent of the easement purchase price. The County is responsible for the balance. The State also operates an eight-year program, under which a farmer agrees not to develop his land for a period of eight years in exchange for the State's sharing the cost of soil and water conservation projects. In addition, the State may buy farmland outright, in "fee simple," retire the

of New Jersey's agricultural industry by enacting a constitutional amendment to provide a stable source of funding "for the preservation of farmland for agricultural or horticultural use and production." *N.J. Const.* (1947), Art. VIII, §2, par. 7. The Garden State Preservation Trust Act authorizes the State Agriculture Development Committee to use money approved from the Trust to fund "grants to local government units to pay up to 80% of the cost of acquisition of development easements on farmland." *N.J.S.A.* 13:8C-38(c).

As the State Agriculture Development Committee reports, the government's business of buying farmland development rights is now booming. In fiscal year 1998, 57 farms, covering 10,253 acres were permanently preserved through the Farmland Preservation Program at a cost of \$36 million.⁴¹ In fiscal year 1999, in expending some \$26 million, another 51 farms, totaling 6,087 acres were preserved. Fiscal year 2000 saw additional development easements purchased, costing almost \$37 million and permanently preserving 11,353 acres of farmland. Through October 2000, in fiscal year 2001, approximately \$12 million has preserved 2,589 acres on 25 farms.

The cost per acre of easement purchases varies widely throughout New Jersey and is often driven by real or perceived development pressures. In Burlington County, the average value of a development easement on farmland⁴² is generally between \$2,600 and \$4,500 per acre. In the 1999

development rights, and sell it as a farm to an interested purchaser.

⁴¹ These numbers reflect closings on easement purchases in particular fiscal years, that is, closings occurring between July 1 and June 30 of the following calendar year. Preservation of the farms considered in any particular year's funding round may not occur for several months following the approval and funding decision by the SADC.

⁴² The values discussed herein are the average certified easement values set by the SADC between 1994 and 2000. The price actually paid for the easement in any particular case, based on

funding round, however, easement values of \$24,785 per acre and \$23,100 per acre were set for two farms which had been purchased by Medford Township in settlement of litigation. The average certified easement value in Cape May County between 1994 and 1998 varied between a low of \$1,304 per acre and a high of \$3,905 per acre. In the 1999 funding round, however, an easement value of \$23,000 per acre was set for a six acre tract, the sole applicant in the county during that funding round. In the first of the two annual funding rounds in 2000 (the “2000A” round), an easement value of \$17,100 per acre was set for a second six acre parcel in Cape May County. A new record for the price of a development easement purchased under the Farmland Preservation Program was recently set during the 2000B funding round in Middlesex County -- almost \$35,000 per acre.⁴³ More stable figures have been reported in some other counties. For example, in Cumberland and Salem Counties, the average easement values between the 1994 and the 2000B funding rounds have varied less than \$1,000 per acre. In Sussex County, the average per acre easement values have varied between \$2,282 and \$3,310 per acre in this same period. Similarly, the average easement values in Warren County varied between a low of \$3,200 per acre and a high of \$4,565, the latter in the 2000B funding round.

While efforts to protect farmland in New Jersey have been around for almost 20 years, as of October 5, 2000, only about 67,500 acres of farmland had been preserved through easement

the owner’s sale price bid, may be higher or lower than the certified value but, as is also required for the certified value, must be within the range of the two county-level appraisals obtained.

⁴³ During the 2000A funding round, an easement value of \$46,465 per acre was established for the Suydam Farms in Franklin Township, Somerset County, but the landowner did not make a final offer so the purchase will not occur. Suydam Associates owns various commercial and acreage properties.

purchases.⁴⁴ As the Land Use Committee report warned in 1960 with regard to recreational lands, however, vacant land was being developed in New Jersey at such a rate as to warrant accelerated acquisition.⁴⁵

In 1960, over 90 percent of New Jersey's population was crowded into less than a quarter of the State's lands, around the metropolitan areas of Manhattan, Philadelphia, Trenton and Atlantic City.⁴⁶ Today our population has spread out, with many settling into a growing suburbia or claiming a few acres in search of a rural lifestyle. This "sprawl" has resulted in farmers competing for farmland with people who want to own acreage, rather than a place to farm.⁴⁷ The result is that farmers are sometimes unable to afford to own enough farmland from which to make sufficient income and must embrace an uncertain economic future by leasing land owned by speculators, estate farmers or others who seek to obtain the advantage of the farmland tax assessment.⁴⁸

⁴⁴ Almost 11,000 of these acres were preserved through the Burlington CADB, which places Burlington County far ahead of other CADBs in acreage preserved. Furthermore, although closings had not yet occurred as of October 5, 2000, on all easement purchases approved in the 1999, 2000A and 2000B funding rounds, over 11,000 acres of farmland were approved during the 1999 funding round, and more than 12,600 acres were approved during the 2000A funding round. In funding round 2000B, more than 3,750 acres were approved for easement purchases.

⁴⁵ Land Use Committee, Dept. of Conservation & Economic Development, "The Need for a State Recreational Land Acquisition and Development Program: An Exploratory Report" (November 1960).

⁴⁶ *Id.*, at 13.

⁴⁷ Daniels & Bowers, *Holding Our Ground: Protecting America's Farms and Farmland* (1997).

⁴⁸ Many farmers in New Jersey rent a number of parcels from different owners to obtain economies of scale. Indeed, one farmer interviewed by OIG staff stated that she and her husband

No single solution to preserving farmland exists, and several tactics, blending good planning policies with politics, must occur simultaneously⁴⁹ and, indeed, New Jersey has approached the problem of preserving its farmland on many fronts. The vital first step in preserving farmland seems to be that government policies and plans must recognize the importance of the role farming plays in the local economy and that farmland contributes to local property taxes at a level higher than the farm's demand on public services.⁵⁰ New Jersey's 1964 Farmland Assessment Act, the 1983 Right to Farm Act, the 1983 Agriculture Development and Retention Act and the 1999 Garden State Preservation Trust Act all recognized that farming is important and beneficial to the State's economy. To preserve farming, agricultural zoning alone, because of its impermanence, is insufficient. Creation of greenbelts around developed areas through the use of easement purchases, transfer of development rights, or outright purchase of open lands is generally recommended.⁵¹

In some sense, the propriety of expenditures under the Farmland Preservation Program cannot be separated from the issue of whether farming itself can be preserved for the future in this State. Saving the land cannot alone guarantee the future of farming where agricultural support businesses

rented land from 29 different landlords, in addition to farming their own land. If preserving the viability of farms is the goal, as it clearly is under New Jersey's Constitution, then even low density residential development should be discouraged in rural areas, because it displaces farming as much as other types of development. *Id.*, Mitchel, *Gaining Ground*.

⁴⁹ Paulson, Jerry, "Protecting Farmland on the Edge: What Policies and Programs Work?" American Farmland Trust, Center for Agriculture in the Environment.

⁵⁰ See, e.g., Sorensen, *Living on the Edge: The Costs and Risks of Scatter Development*; Burchell, *New Practitioner's Guide to Fiscal Impact Analysis*, and "Economic Benefits of Open Space," *Public Finance Digest*, all above.

⁵¹ Paulson, *ibid.*

are disappearing at an astounding rate and more and more farmers are approaching retirement. Scholars and farmers alike contend that the way to develop a new generation of farmers is to make farming more profitable, but, of course, discussion of the various means to do so are beyond the purview of this Report. Nevertheless, such issues have been and must continue to be grappled with by policymakers, before it is too late.⁵²

3. The State of Farming in New Jersey

According to the U.S. Department of Agriculture's 1997 Census of Agriculture, 832,600 acres of farmland remain in New Jersey, down about 15,000 acres since the 1992 census.⁵³ In what appears to be a heartening statistic, farmland acreage has increased since 1992 in Atlantic, Burlington, Camden, Middlesex, Monmouth, Ocean, Passaic and Somerset Counties. However, acreage in farmland has decreased in Bergen, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Morris, Salem, Sussex and Warren Counties. The largest farmland losses have been in Salem and Warren Counties, which respectively lost 6,209 and 4,738 acres of farmland.

Five New Jersey counties, Burlington, Hunterdon, Salem, Sussex and Warren, each have 66,289 acres or more of land in farms. Another six counties, Atlantic, Cumberland, Gloucester, Mercer, Monmouth and Somerset, each have between 28,101 and 66,288 acres in farms. Camden, Cape May, Middlesex, Morris and Ocean Counties have between 2,634 and 28,100 acres in farming

⁵² The Farmland Stewardship Program, a plan providing assistance to landowners and farmers for projects that will improve the economic viability of their farms, appears to be part of an effort to meet this challenge.

⁵³ All statistics in this section are derived from the 1997 Census of Agriculture.

and the remaining five counties⁵⁴ each have 2,633 or fewer acres of farms. Burlington, Gloucester, Hunterdon, Monmouth and Warren report the highest number of farmers,⁵⁵ while the other New Jersey counties report fewer persons whose principal occupation is farming.

Two-thirds of New Jersey farms are less than 50 acres in size. *See* Table 2. Sixty-one percent of New Jersey farms report sales of less than \$10,000 per year, which means they are

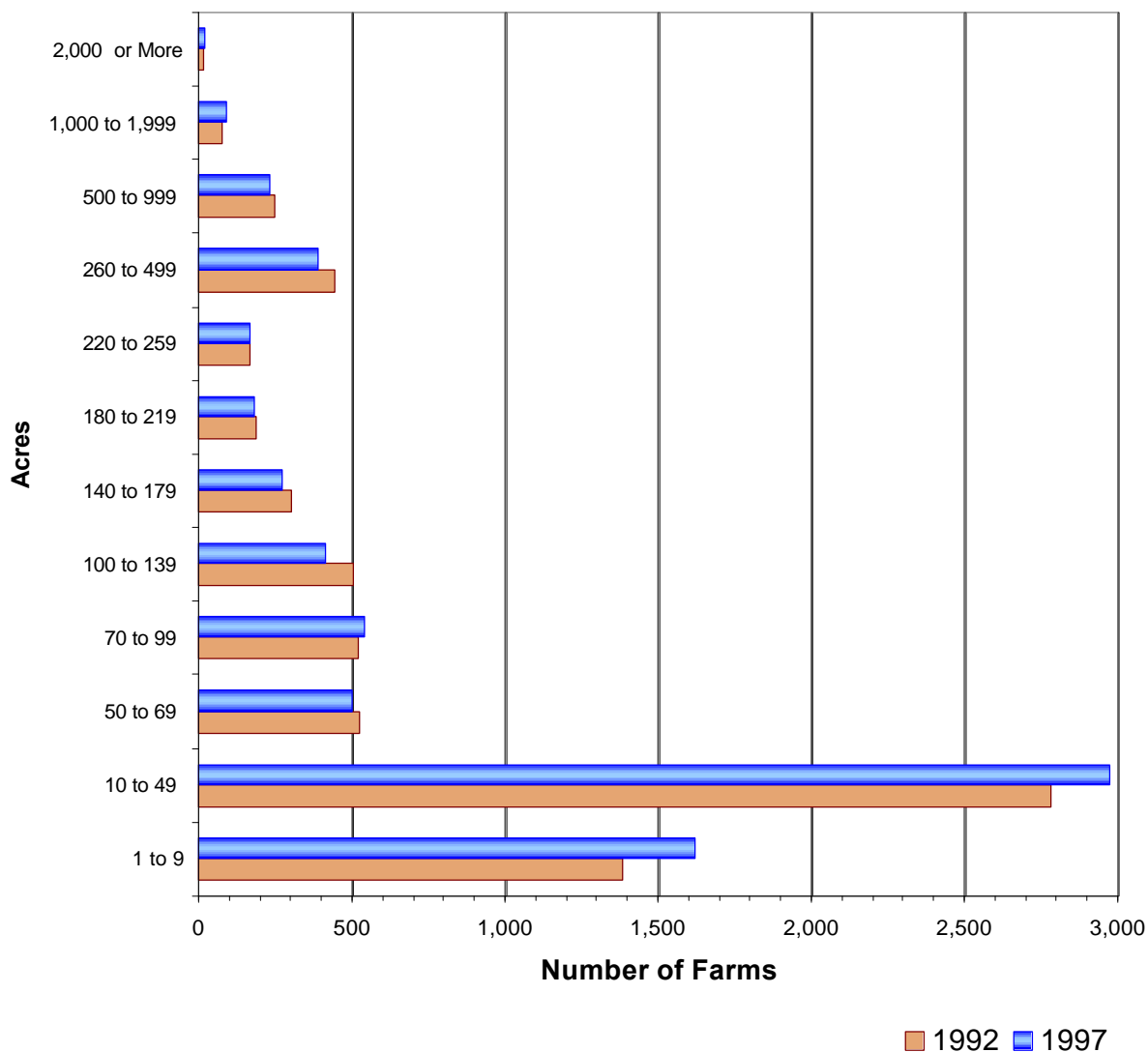
Table 2: Size of New Jersey Farms

⁵⁴ Bergen, Essex, Hudson, Passaic and Union Counties. Bergen and Passaic recently created County Agriculture Development Boards (CADBs) in an attempt to preserve their remaining agriculture. All of the 21 New Jersey counties except Essex, Hudson and Union have County Agriculture Development Boards in order to participate in the Farmland Preservation Program.

⁵⁵ These counties each have 305 or more persons reporting their principal occupation as farmers, while Atlantic, Cumberland, Morris, Salem, Somerset and Sussex report 124 to 304 persons whose principal occupation is farming. Bergen, Camden, Mercer, Middlesex and Ocean report between 58 and 123 such farmers and the other counties 57 or fewer.

Source: USDA, National Agricultural Statistics Service, 1997 Census of Agriculture - County Data.

described as “rural residences” or “hobby farms” by the United States Department of Agriculture



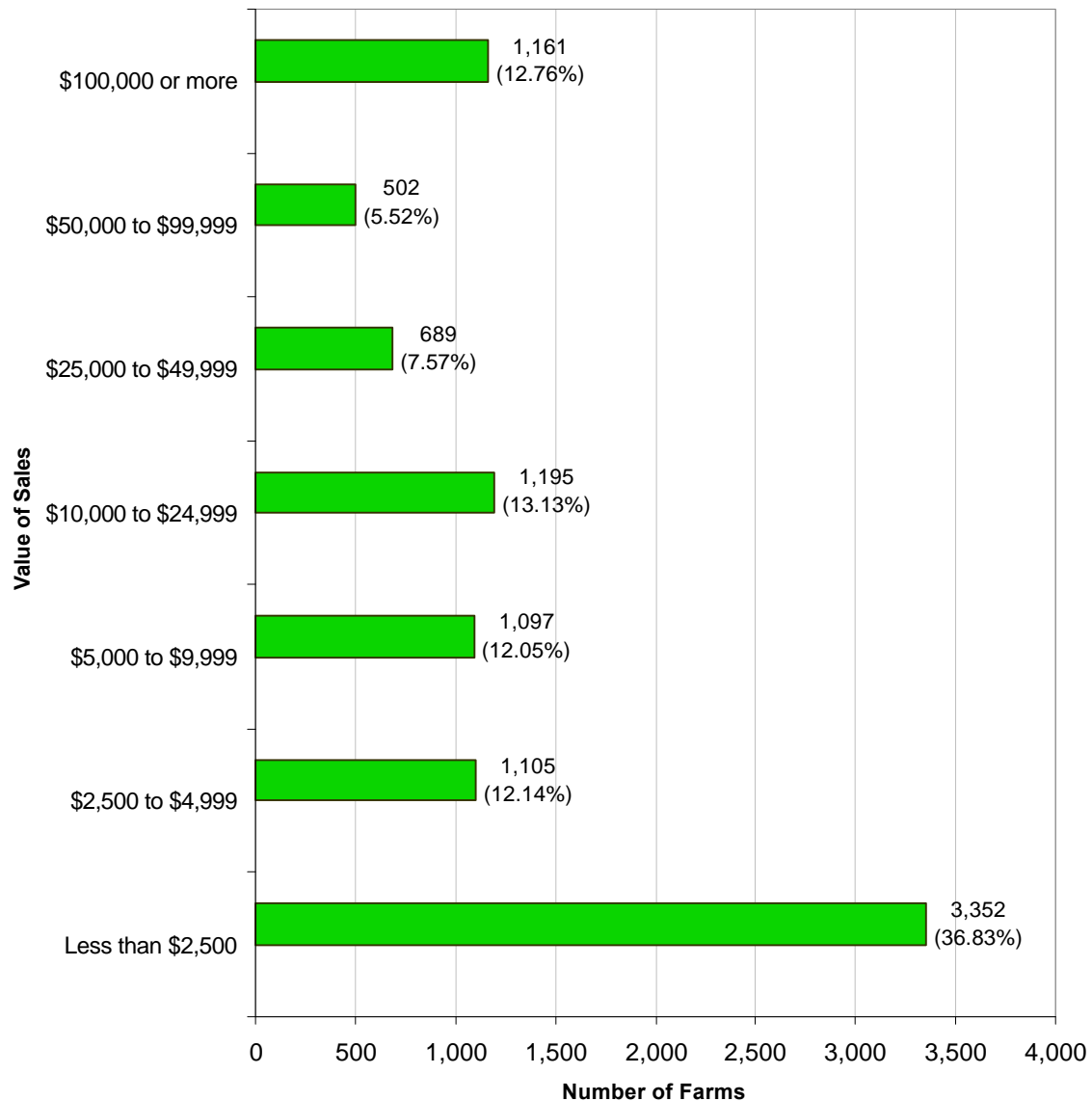
and 36.8 percent of farms in this State annually sell agricultural or horticultural products worth less than \$2,500. Less than 20 percent of New Jersey farms annually sell agricultural or horticultural

products worth more than \$50,000. *See* Table 3.

Table 3: New Jersey Farms by Value of Sales (1997)

Source: USDA, National Agricultural Statistics Service, 1997 Census of Agriculture - County Data.

To maintain a viable farm in a landscape which is regularly becoming more hostile to farming requires innovation. Thus, New Jersey farmers are increasingly becoming “niche” farmers. Several



productive farms are “pick-your-own” farms. Almost half of all New Jersey crop sales are for nursery and greenhouse products,⁵⁶ thus demonstrating that New Jersey farms are not only managing to live next to their suburban neighbors, but to supply the landscaping and gardening products these neighbors desire. Individual or family farms comprise almost 85 percent of New Jersey farms, but only 38.5 percent of New Jersey farmers are full-time farmers, and 56.9 percent of New Jersey farmers state that farming is not their principal occupation.

4. The Farmland Preservation Application Process

The Farmland Preservation Program is a voluntary program. Farmers who wish to sell the development rights to their land may apply to the program through one of several avenues. The application may be made to the local County Agriculture Development Board (CADB) under the county grant program, to a non-profit organization, to a local municipality pursuant to the planning incentive grant program, or directly to the State program, which is administered by the State Agriculture Development Committee. Under the county grant program, the focus of this Report, each CADB is charged with reviewing local applications and assessing whether they meet county criteria and assessing how they measure up against criteria developed by statute and by the State Agriculture Development Committee (SADC).⁵⁷ The criteria for ranking the desirability of farmland for preservation include consideration of how valuable the land is to agriculture. This requires

⁵⁶ Of the approximate \$593 million in crops sales by New Jersey farmers evidenced by the 1997 Census of Agriculture, nursery and greenhouse products comprised the largest segment, totaling approximately \$278 million in sales (47%). Sales of vegetables, sweet corn and melons, the next largest category, were a distant second place at \$151 million (25%).

⁵⁷ *N.J.S.A.* 4:1C-31(b); *N.J.A.C.* 2:76-6.5.

consideration of soil quality, whether the land contains buffers, such as buffers between the farm and developed areas, whether the community in which the farm is located is supportive of agriculture and whether the land's development appears imminent. *N.J.S.A.* 4:1C-31.

If the CADB determines that it is desirable to preserve the farm and approves the application, the board then obtains two independent appraisals for the property. The two appraisers for the property are selected, generally by the County Board of Chosen Freeholders, from a list of qualified appraisers maintained by the State. The two appraisals are conducted to value the land's development potential.⁵⁸ The CADB ranks applicants according to the county's interest in preserving the land, and the applications are submitted to the State.⁵⁹

The SADC ranks the county submissions by applying statutory and regulatory standards on the desirability of preserving the land, including such factors as soil composition and imminence of development. The State, thereafter, conducts a review appraisal and issues a certified easement value. The review appraisal is generally not an on-site review of the property, but a "desk appraisal" of the work of the two county appraisers. Thus, the review appraiser is not independently determining a monetary value for the property, but is limited to the values set by the two county-hired appraisers. The review determines, first, whether the two appraisals considered appropriate

⁵⁸ The value of a development easement is the difference between the value of the property at its "highest and best use," usually as residentially developed, and its value after an agricultural deed restriction is placed on the farm. Greater development pressure contributes to a higher development value. Thus, if a tract of land could be sold on the open market for residential development at a price of \$500,000, and if its value restricted to farmland use were \$100,000, the value of a development easement on the property would be \$400,000, which would be the price the government pays to permanently restrict development on the land.

⁵⁹ The top-ranked farm in each county gains additional points based on that factor in order to increase the chance that it will be preserved under the program. This helps insure geographic distribution and recognizes the county's ranking system.

factors and applied the procedures required by the State appraisal handbook and accepted appraisal standards.⁶⁰ If the appraisals appear to be appropriately conducted, the review appraiser recommends an easement value to the SADC, which certifies the value of the easement. The certified easement value is required to be between the lower and higher easement values ascribed to the land by the two appraisers hired by the county.⁶¹ If the two appraisals submitted by the county do not conform with the State appraisal handbook or generally accepted appraisal practices, the SADC may invalidate the appraisals and reject the application.

After the CADBs are notified of the certified easement values, the landowners submit confidential bid offers to the SADC. The bids are opened and reviewed at a single time. The bid is the price the owner will accept to sell the development easement. A bid submitted by a landowner need not conform with the certified easement value set by the State's review appraiser, but must be no higher than the easement value in the higher of the two appraisals obtained by the county. The State's cost share of the easement purchase is based on its certified value or the landowner's asking price, whichever is lower. The SADC uses two methods, the discount method and the sliding scale method, to compute the percentage of grant cost share and uses the higher as the basis for the State's share. Under the discount method, the greater the landowner's discount, the greater the SADC cost share. This method provides an economic incentive to the counties to negotiate with the landowners.

⁶⁰ For example, if a site contained substantial wetlands and the appraisal failed to denote and discuss that fact, the appraisal might be rejected as deficient. If, however, the appraiser made what the review appraiser believes to be an insufficient adjustment in value based on the amount of wetlands on the property, the reviewer would not substitute his own judgment for that of the appraiser.

⁶¹ In most cases, the SADC certifies the value recommended to it by the State review appraiser. In some transactions, the SADC certifies a different value, although still within the range established by the county level appraisals.

Under the sliding scale method, the lower the per acre value, the higher the SADC cost share. This method provides rural areas, presumably having lower per acre values and less financial resources, more aid via a greater percentage of grant cost sharing by the State. Thus, while the basis of the State's cost share is the lower of the certified easement value or the landowner's bid, the percentage of that basis which the State will pay can vary, and increases if the landowner discounts his bid from the certified easement value.

After receipt of the landowners' bid offers, the State then re-ranks the purchase priority of the farms. A landowner who submits a bid offer below the certified value will move up in ranking, while a landowner who submits a bid higher than the certified value will move down in ranking. As many easements as available funds allow will be purchased in the order of this final ranking. Competition to enter the Farmland Preservation Program in the past resulted in many farmers discounting their bid offers from the certified value.⁶² By the 2000B funding round, few applicants discounted their bids below the certified value.

After the re-ranking, the list of farms is presented to the Garden State Preservation Trust for approval and then presented to the Legislature and the Governor for appropriation of funds for the individual projects. The State then disburses funds to the counties to purchase easements. That is, the State provides its share of the cost to the counties. The counties then contribute their share, and close on the purchase with the seller.

In Cape May County, it is the usual practice for the county to directly purchase a

⁶² Farmers, particularly those where land values are lesser, decry the discounting process as unfair because, when funds for farmland preservation were limited, it required that, to enter the preservation program, they accept less than the fair market value for relinquishing a development easement on their land. On the other hand, while spending some \$200 million to preserve farmland, the State has saved \$25 million through the discounting process.

development easement from the land owner, and then apply to the SADC for reimbursement of the purchase. OIG staff were advised that the Cape May CADB purchases the easements directly so that the local farmer-applicants will not need to accept a discount on the certified value of the easement in order to enter the program. In the past, several other counties have occasionally used this direct easement purchase, coupled with applying to the State for reimbursement, ordinarily when speed in closing on the easement purchase was necessary in order to obtain the easement at all. Since 1996, this direct easement purchase by the county has been increasingly utilized in Burlington County.⁶³

When a direct easement purchase is made by a county, the CADB determines the value it pays the landowner for the easement, and then submits the farm to the State program for reimbursement, with the county undertaking the risk that the State program will not accept the farm into the program, or that the subsequently certified value will not be as much as the county paid the owner. Although a higher amount may have been paid to the landowner by the county, the SADC only calculates its cost share based on the SADC certified value. When the county discounts from the certified easement value, the county coffers, rather than the individual farmer, assume the loss. This use of discounting, through the deeper pocket of the county, can move Cape May and Burlington County farms up significantly in the State ranking system, under which the land of owners who discount from the certified value are elevated in the State ranking of purchase priority. Thus, the State may rank lesser quality Cape May County and Burlington County farms higher than

⁶³ When four of the six farms submitted by Burlington County during the 1996 funding round failed to qualify for receipt of SADC funds, the county offered to use local funds to directly purchase an easement on the four farms in order to maintain “program momentum.”

objectively more desirable farms located in other counties and, therefore, move Burlington and Cape May County farms to the top of the purchase priority list.⁶⁴ When funds are available to purchase easements on virtually all applicants, the significance of the discount in determining which easements are purchased should substantially decline.

⁶⁴ The effect of this process can be illustrated with the 1999 SADC rankings of farms for purchase priority. Based on the qualities of the farm, the initially top rated farm in the State, located in Monmouth County, was reduced to 18th after the discounted values were factored into the ranking. The second rated farm, located in Salem County, was reduced to 19th after the final ranking based on discounted prices, and the Ocean County farm rated third in the State dropped to 24th. Conversely, the Fieldstone Farm, initially rated 77th in the State, was elevated to sixth on the State purchase list after Burlington County discounted its asking price for an easement on the farm. The sole farm offered to the program in Cape May County, a six acre parcel in Lower Township with a certified easement value of \$23,000 per acre, was initially ranked 68th on the list; after Cape May County discounted the asking price to \$19,320 per acre, the State ranked this farm number nine in the State in easement purchase priority.

II. GENERAL ISSUES IN DEVELOPMENT EASEMENT PURCHASES

As noted in the Inspector General's statement, recent public criticisms of the Farmland Preservation Program have focused on two areas: First, whether conflicts of interests by CADB members exist and, second, whether the program is purchasing land which either contributes little to the industry of agriculture, has little development value or has little likelihood of actually being developed, thus resulting in unwise or unnecessarily expensive purchases. OIG undertook to gather facts relevant to these issues, by reviewing individual easement purchases from across the State. This section, based on the information gathered by OIG, discusses issues related to potential conflicts of interests, and to the selection and appraisal of properties for preservation.⁶⁵

In selecting particular easement purchases to review, OIG first obtained the SADC listing of the 463 farms preserved as of October 2000.⁶⁶ OIG also obtained a listing of the current members of each County Agriculture Development Board (CADB) and compared it to the SADC listing of preserved farms. Where a similar name appeared on each list, OIG conducted interviews to determine whether the board member had an interest in the property or was related to the seller. Where an interest or a relationship existed, OIG interviewed the board member to inquire whether he or she had been on the board when the member's own land or that of a family member was preserved and, if so, whether the member had participated in the evaluation of the application.

⁶⁵ Information on specific easement purchases through the Farmland Preservation Program is set forth in Appendix II of this Report.

⁶⁶ While additional farms were approved for funding in the 1999, 2000A and 2000B funding rounds, OIG initially reviewed sales of easements which had been finalized by October 2000 through a closing on the State's easement purchase.

In addition, OIG developed a list ranking the purchases by per acre prices paid. While some counties, such as Morris and Somerset Counties, tended generally to have more costly per acre values than others, OIG was particularly interested in properties which seemed substantially higher than their county average. In those instances in which the sale price was not in keeping with the ordinary price per acre in the county, OIG attempted to ascertain what factors would account for the difference. In many instances, OIG conducted a visual inspection of the preserved farms.

OIG developed a list of apparent partnerships or corporate entities and attempted to ascertain if the business entity included a board member. OIG also attempted to ascertain if the business entity was a developer or land investor who may have turned to the program because of difficulties or financial disincentives in developing a particular property. Finally, OIG read published criticisms of the Farmland Preservation Program, including newspaper articles criticizing specific easement purchases, and identified several additional preserved farms for review. Many of the specific easement sales viewed by OIG are discussed individually in the Appendix to this Report.

As discussed more fully below, OIG found no violation of the Local Government Ethics Law by a CADB member's participation in the vote on his own or a family member's application. OIG did, however, identify one instance in which a CADB member participated in the vote on an application to preserve land which the member had leased for many years. In another instance, the member pursued his private business interests while on the board, in a way which increased costs to the county. OIG finds that the current regulations do not sufficiently cover situations which raise the appearance of impropriety and, accordingly, those ethical requirements should be expanded. Additionally, OIG recommends that the Legislature strengthen the ethics law that applies to all local

government officials, not just CADB members, and the ethics law that applies to all State employees, by increasing the existing civil penalties and by including new criminal penalties for knowing or purposeful violations of those laws.

OIG also found that appraisals adequately take into account the development potential of land, including the existence of wetlands or other limitations on development potential. In the course of its review, however, OIG noticed that a shift in policy focus from maintaining the viability of farming, as is constitutionally and statutorily required, to halting development, may be occurring in some instances. Such a shift in focus could drive up prices and control the selection of properties. Therefore, OIG recommends that the appraisal process be enhanced to ensure that easement values are determined fairly and impartially, and that, as constitutionally mandated, the properties selected for preservation contribute to the industry of agriculture.

A. Easement Sales by Members of County Agriculture Development Boards

Some public criticism focused on the substantial number of County Agriculture Development Board members who have sold development easements on their own property to the program, and raised questions about the ethics of this practice. Thus, OIG reviewed easement sales by CADB members for apparent conflicts of interest. OIG found no instances in which a member of a board had participated in voting on the purchase of his own property or that of a family member. Indeed, abstaining from voting on matters where a board member had such an interest was standard practice in all counties. Nonetheless, several CADB members interviewed by OIG were unaware that the Local Government Ethics Law applied to their conduct as board members. In this subsection, OIG summarizes the ethical law and regulations applicable to the Farmland Preservation Program, summarizes OIG's findings with respect to easement sales by CADB members, and points out areas

which raise an appearance of impropriety, but which the existing law and regulations do not adequately address.

The Local Government Ethics Law applies to virtually any officer or employee of a public agency or instrumentality below the State level.⁶⁷ That law requires both local government officers and employees to adhere to the statutory code of ethics, or any stricter code established by a county ethics board, and additionally requires local officers to file annual financial disclosure statements. *N.J.S.A.* 40A:9-22.5, *N.J.S.A.* 40A:9-22.6 and *N.J.S.A.* 40A:9-22.15.

Under the statute, neither a local government officer or employee, nor a member of his immediate family, is permitted to have a business interest which substantially conflicts with the proper discharge of his duties in the public interest. Furthermore, a local government officer or employee is barred from using or attempting to use his official position to secure unwarranted advantages or privileges for himself or others. The local officer or employee is further precluded from acting officially in any matter where he or she or “a member of his or her immediate family,”⁶⁸ or a business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.” *N.J.S.A.* 40A:9-22.5. Thus, the law prohibits a CADB member from deliberating on and voting on his own application or that of a member of his immediate family because doing so would be an official act affecting his own personal or financial interests and his acting on such matters would create an appearance of impropriety. Violation of the Local Government Ethics Law

⁶⁷ State employees are governed by a separate ethics law, the Conflicts of Interest Law, *N.J.S.A.* 52:13D-12, *et seq.*

⁶⁸ A member of one’s immediate family is defined in the Local Government Ethics Law as a spouse or dependent child residing in the same household. *N.J.S.A.* 40A:9-22.3i.

subjects the violator to a civil fine between \$100 and \$500. *N.J.S.A. 40A:9-22.10.*

In September 1988, Attorney General Formal Opinion No. 84-6311 was issued, which concluded that members of the SADC could apply to the Farmland Preservation Program but should recuse themselves from voting not only on their own applications, but also on all other applications from the counties in which the members' properties were located during the pendency of their own applications. Voting on other properties while their own application was pending was prohibited, because a vote on other applications could affect the availability of funds to purchase the member's own development rights, in that farms are ranked against each other in competition for available funds. The SADC subsequently enacted a code of ethics for its members which wholly precluded any employee from applying to sell development easements on his or her property, or selling his or her property in fee simple to the SADC.

In June 2000, in response to an inquiry from the Executive Director of the SADC, the Attorney General issued formal opinion No. 00-0041 regarding the application of the Local Government Ethics Law to actions by CADB members. That opinion concluded that a voting member of a CADB could apply to the Farmland Preservation Program through the county board but "would be required to recuse himself/herself from considering his/her own application and any other similar applications while his/her own application is pending before the County Agriculture Development Board." In essence, that would disqualify the member from evaluating any farm applicants during the funding round which includes his or her own property. The opinion did not address the requirements for situations in which the applicant is a family member or a landowner from whom the CADB member leased farmland.

In August 2000, in an effort to avoid perceived conflicts of interest, former Governor Christine Todd Whitman (Governor Whitman is now Administrator of the United States

Environmental Protection Agency) proposed that any CADB member be required to resign before the board member, or a member of his or her immediate family, could apply to the Farmland Preservation Program. Some farmer members interviewed by OIG criticized the proposal. Others embraced the policy because they felt it would assist in clearing the tarnished reputation of such boards which had resulted from what they viewed as unfair, inaccurate and biased press reports. When the proposed new rule was published for public comment in *The New Jersey Register*, only the Middlesex CADB formally opposed its enactment.

The proposal was subsequently enacted as a regulation. *N.J.A.C. 2:76-6.18(z)*. The regulation provides that, as a condition of a county's receiving grants for farmland preservation, the CADB must adopt a code of ethics which prohibits members or their immediate families⁶⁹ from applying to sell or selling easements on their farms, or from applying to sell their farms in fee simple, under the State Farmland Preservation Program. While the regulation has the effect of requiring CADB members to resign their public position before submitting an application to the Farmland Preservation Program, the regulation is silent regarding how soon after the date of the resignation an application to the program can be made. The regulation, furthermore, does not indicate if or when a member may seek to rejoin the board. The new regulation applies beginning with applications

⁶⁹ "Members of the immediate family" is defined more broadly in the new regulation than under the Local Government Ethics Law. (*See* fn. 68, above). Under the new regulations, the definition of immediate family member is expanded to include parents and siblings, if living in the same household as the CADB member.

submitted for the 2001 Application Round, for which applications were due November 15, 2000. *See 33 N.J.R. 253(a).* The regulation reiterates the fact that CADB members are also required to comply with the Local Government Ethics Law.

As stated above, in interviewing CADB members who had made application to the program, OIG staff learned that several members of CADBs were unaware of the existence of the Local Government Ethics Law or of its application to their conduct. In addition, while several CADBs had written codes of ethics in place, others had no written policy. Further, the recusal procedures which have been used by CADBs varied from county to county, with some allowing the member whose farm was the subject of an application to the program to attend the board meeting but adjourn to the audience and merely abstain from voting while his or her farm was being considered by the board. Other CADBs required the member to recuse him or herself by leaving the meeting entirely.⁷⁰ While such county procedures uniformly required members to at least abstain from voting on their own applications, it was generally deemed acceptable to participate in reviewing applications made by others during the time one's own was pending. Hunterdon, Mercer and Morris CADBs, however, completely prohibited board members from applying to the program. The issue appears never to have arisen in Sussex County, where no CADB member has applied to the program.⁷¹

⁷⁰ Recusal requires that the individual member play absolutely no role in the action at issue. Thus, it is insufficient to merely abstain from voting. The board member must not discuss the matter with any other board member or have any involvement in the matter.

⁷¹ One Sussex County board member suggested the reason for this is that no board member owns a farm "good enough" to preserve with taxpayer dollars. Clearly, this indicates that the Sussex CADB, in accord with its constitutional and legislative mandate, strives to preserve only those farms which contribute appropriately to the industry of agriculture.

The number of CADB members who have sold their farms' development rights to the Farmland Preservation Program is significant. The farmer members of each board tend to be substantially involved in the farming community, and the farming community itself is not terribly large. It should not be surprising that those with a commitment to agriculture, and who demonstrate that commitment by volunteering to serve the agricultural community in public ways, would want to preserve their own farmland. In some instances reviewed by OIG, the land owned by these farmers was particularly attractive for preservation purposes. Furthermore, in the early years of the program, many farmers were extremely reticent to participate in the program. Some of the board members supported the program by putting their own farms into it at that time.

Individual synopses of the facts concerning the easement purchases on the farms belonging to CADB members or their family members are described in Appendix II of this Report dealing with specific easement purchases. In its review of easement purchases, OIG did not find any instance of a board member violating the Local Government Ethics Law by actually participating in a vote on an application for land which he or a family member owned. OIG did observe, however, that some actions by a Burlington CADB member appeared to further his personal business interests in a way which increased costs to the county. In another instance, that board member voted on an application to preserve land which the member had leased for many years.⁷² But, in general, abstaining from voting on matters where a board member had a clear interest was standard practice in all counties.

A noteworthy number of other individuals, who are involved in local government but not members of the CADBs, have also put farms into the program. Farming families may have been

⁷² These specific easement purchases are reviewed in the Appendix to this Report.

residents of a locality for a number of years and, in view of their stake in the community, may naturally gravitate towards participation in local issues. Thus, the fact that such persons may demonstrate interest both in local public service and in preserving their land is not surprising. Accordingly, OIG did not view the participation of such individuals in the Farmland Preservation Program, in and of itself, as indicating deficiencies in the operation of the program, since OIG found no evidence that these individuals had obtained an improper advantage in the program by virtue of their public position.

Nevertheless, membership on a CADB may afford certain benefits to members and their associates, resulting from the natural tendency of persons who work together to sometimes accommodate each other. Thus, a CADB member may well, albeit unconsciously, give an application by a fellow board member more consideration than that of a stranger. That this concern had some basis in fact was demonstrated in a comment to OIG staff by one board member. Despite the fact that this board member found it difficult to continue to devote time to the work of the board, he stated that he wanted to stay on the CADB until his brother's application came before the board. This board member was from a county which required that members neither discuss nor vote on their own or family applications and absent themselves from any meeting in which the property is discussed. Indeed, this board member had appropriately recused himself and left the meeting entirely in the past when another relative's farm was being considered. Nevertheless, the member was committed to remaining on the board until his brother's application -- which he would not vote on -- was considered. Thus, this member clearly felt there to be some implicit advantage in having a relative on the CADB if one applied to the program.

The new SADC regulation heightens the ethical standards of the program by prohibiting a

member or the member's immediate family from applying to the Farmland Preservation Program. But it does not cover every foreseeable situation which would create an appearance of impropriety. For example, as pointed out by Senator William Schluter in testimony before the SADC when it was considering adopting the new regulation, the rule does not apply to situations in which the applicant is a business associate of the board member, or the landlord from whom the board member leases farmland, or a relative but not a member of his household. Under such circumstances, the member could remain on the board, but the Local Government Ethics Law would preclude the member from participating in the evaluation of the application or of other applications pending at the same time, because these situations involve a "direct or indirect financial or personal involvement that might reasonably be expected to impair [the member's] objectivity or independence of judgment." *N.J.S.A.* 40A:9-22.5.

Because of the size of the public expenditures by the program, because of the linchpin role played by the CADBs, and because of the dual roles of farmers as CADB members and as recipients of these public expenditures, it is appropriate to adopt ethical rules to keep the program beyond reproach and avoid even the appearance of impropriety. Accordingly, OIG recommends that the SADC give consideration to enhancing the ethical rules by having the CADBs instruct applicants to apply directly to the SADC whenever the applicant has any relationship to a board member which would create an appearance of impropriety if the board member acted on the application. This recommendation is discussed in Section III of this Report, below. Additionally, members of CADBs and their families should be precluded from applying to the Farmland Preservation Program for one

year after the date of the member's resignation from the CADB.⁷³

But the CADBs are not unique in this presentation of ethical concerns. They are not the only local boards -- or indeed State-level boards -- whose members may benefit financially from the program the board administers. Thus, OIG also recommends that, to address these issues in a more comprehensive manner, the Legislature consider strengthening the Local Government Ethics Law, and the Conflicts of Interest Law which applies to State-level employees, to increase the existing civil penalties and to provide new criminal penalties for purposeful or knowing violations. Thus, if a local government employee undertook a private business interest which he knew to be in substantial conflict with the proper discharge of his public duties, he would have committed a crime. Similarly, it would be a crime if the local government employee knowingly used his official position in an attempt to secure unwarranted advantages for himself or others. Non-employees who knowingly assist an employee's violation of his ethical duties would be subject to being charged as accomplices.

B. The Crucial Role of Appraisals in Evaluating Development Easements

Some critics of the Farmland Preservation Program have asserted that the State is paying for the development rights of land which is not otherwise able to be developed, or is unlikely to be developed. Critics point to easement purchases on farms with heavy wetlands components, for example, and contend that the State is paying to halt development on land which could not be developed anyway under existing laws.⁷⁴ County-level appraisals of the land, however, control the

⁷³ Similarly, the Local Government Ethics Law prohibits local authorities from awarding a contract which is not publicly bid to a former member of the authority for a period of one year after his termination. *N.J.S.A.* 40A:9-22.5b(1).

⁷⁴ Individual synopses of the facts concerning the purchases of some of these publicly criticized properties are included in Appendix II of this Report.

upper range of the easement purchase price. The appraisals conducted during the application process consider and evaluate the development potential of the land, and are required to adjust the value for wetlands and other limitations on development potential. *N.J.A.C. 2:76-10.6(c)2*. In short, the system for valuating development easements for purchase by the government contains safety checks in requiring objective appraisals and in imposing requirements on what factors the appraisers are to consider. The checks and balances built into the program depend on the objectivity and accuracy of the two initial appraisals. Nevertheless, an appraisal remains more an art than a science, particularly where unique land characteristics make truly comparable sales both difficult to find and a matter of subjective evaluation, discretion and judgment. This being so, the credibility of the program's ability to obtain value for government expenditures is dependent on the credibility of the appraisals. For this reason it is important that the Report address the appraisal process.

This subsection of the Report begins with an overview of the appraisal procedures currently used in the Farmland Preservation Program. It then discusses some of the issues surrounding the appraisal of properties containing wetlands or other potential impediments to development. The subsection concludes with a discussion of the issues raised by the program's purchase of easements to block development on acreage surrounding large estate homes, which face little cognizable risk of development.

1. The Appraisal Process

Under the Farmland Preservation Program, two appraisals of each applicant property are required, and those appraisals in turn are reviewed by a State review appraiser. The two initial appraisers are selected by the county. When the easement purchase program began in 1983, the State and the counties shared the easement costs equally. Under that arrangement, it was determined that

the counties would select the appraisers. However, the law was later changed to increase the State's share of the cost, to between 60 and 80 percent, without correspondingly increasing the State's ability to ensure the appropriateness of these costs. *See P.L. 1988, c.4, see also N.J.A.C. 2:76-6.11d.* The ability of the two initial appraisers to fairly and accurately estimate the appropriate value of the development easement is crucial to the integrity of the program, because the State's review of value is not a *de novo* review. That is, the State's review appraiser evaluates the two appraisals submitted with the application by the county and establishes a recommended value for the development easement, which must be within the range established by the original two appraisals. *N.J.A.C. 2:76-11.7.* Unless the State review appraiser concludes that the appraisals failed to comply with the professional standards for conducting appraisals or failed to comply with the State handbook for such appraisals, the appraisals will be utilized to form the range within which the certified value for the development easement must fall. Thus, the State review appraiser cannot reject or adjust the range of the appraisals established by the county's two appraisals, even if he strongly disagrees with the value conclusion reached by the appraisers, as long as the county appraisers followed the appropriate procedures and considered the appropriate factors.⁷⁵

The appraisals estimate the value of a development easement on the land. The value of a

⁷⁵ In one easement purchase reviewed by OIG and included as part of the Appendix to this Report, the State review appraiser noted that the appraisals submitted by the county followed appraisal standards and opined he did not have a basis to doubt the judgment of the two appraisers "however scarce the data is and minimal the explanations for the adjustments." In some more recent reviews, the State review has rejected appraisals with what were deemed to be insufficient data analysis to support the appraisers' development easement valuations, finding this failed to comply with the appraisal handbook standard or generally recognized appraisal practices.

development easement is the difference between the “before” value, that is, the highest value of the land as used for any purposes or “market value unrestricted,” and its “after” value as restricted to use for agricultural purposes. *N.J.S.A.* 4:1C-31. The highest value of the land, or “highest and best use,” is generally the most profitable, likely and legal use for the property.⁷⁶ In some cases the most profitable use may not be permissible under existing zoning or other land use regulation, but such uses may be considered if the necessary zoning changes are realistically available and that fact is

reflected in the marketplace. The accepted procedure for appraising easements, and as reflected in the SADC regulations concerning appraisals, *N.J.A.C.* 2:76-10.6(c), requires that the appraisers identify the market value of the land as if it were vacant.⁷⁷ If the property is improved, the appraiser then analyzes the entire property as currently improved to estimate the highest and best use of the entire property. Once land value and highest and best use are estimated, the appraiser then estimates the value of the property.⁷⁸

Under the current law, the State review appraiser must recommend a certified easement value within the range established by the two county appraisals, or reject both appraisals. *N.J.A.C.* 2:76-6.8(a). The State Agriculture Development Committee has final authority for certifying the fair market value of the development easement. It bears repeating that the SADC may only find an

⁷⁶ In every easement sale reviewed by OIG, “the highest and best use” of the property was deemed to be as residential development. Theoretically, however, the highest and best use could be commercial or industrial development.

⁷⁷ See also *Appraising Easements: Guidelines for Valuation of Historic Preservation and Land Conservation Easements*, The Land Trust Alliance (2nd ed.), p. 16.

⁷⁸ *Id.*

appraisal invalid if it does not comply with the appraisal handbook standards, *N.J.A.C. 2:76-10*, or generally recognized appraisal practices, *N.J.A.C. 2:76-6.8(d)*. If the appraisal is found to be invalid, the SADC must reject the application for which the appraisal was conducted, but cannot otherwise set a value outside of the range set by the county appraisals. *N.J.A.C. 2:76-6.8(d)1*.

Until recently, the State's rejection of appraisals was singularly uncommon. During the first of the two funding rounds in 2000 (the "2000A" round), however, the State appraisal review process resulted in the SADC being unable to certify a development easement value in eight applications from Monmouth County.⁷⁹ The State's rejection of these applications was based in all but one case on a finding that there was no difference between the "before" and "after" value estimates on the properties (and, thus, no value to a development easement).⁸⁰ In one of these Monmouth County applications, a 30 acre parcel with a one acre exception for subsequent residential development was rejected. The State review rejected that application, made by a realty company, on the basis that the impact of 80% wetlands on the subject parcel, as well as zoning restrictions, made subdivision of the property into more than one building lot very unlikely. The county appraisals had evaluated a

⁷⁹ In Monmouth County, the county staff to the CADB, using SADC-established criteria, prepares a ranking of the farm applications and presents the list to the CADB. The CADB then votes on the applications as a block, that is, either to accept or reject all of the applications as presented by staff. County personnel opined that this procedure was appropriate because, despite the county's greater familiarity with local farms, they felt that the SADC, rather than the county, should be responsible for deciding whether preserving any particular farm was warranted. One Monmouth CADB member interviewed by OIG staff stated that he believed one of the farms in the 2000A funding round was inappropriate for preservation, but felt constrained to vote "yes" on the application rather than vote against all the other farm-applicants. This procedure used by Monmouth County clearly fails to make use of the expertise of farmer members of the CADB in evaluating, as an initial question, whether a tract's contribution to the industry of agriculture renders it worth preserving in the first place. OIG is advised, however, that Monmouth County is changing this "all or nothing" voting procedure.

⁸⁰ In the final application, the State reviewer found that, because the two appraisals submitted were seriously flawed, it was not possible to certify a "before" value.

development easement on this tract to be worth between \$29,000 and \$34,800 for the tract. The State review appraisal found a development easement on the parcel to have no value.⁸¹ In several of the cases, the State reviewer determined that the highest and best use of the properties, both before and after restriction, would be as a single large building lot for an estate-type dwelling. These rejections demonstrate the value of having the two local appraisals reviewed by a third State appraiser, to guard the public's money against unnecessary expenditures. At the same time, they

demonstrate how much two appraisers can differ on their opinion of the value of an easement, in one case, from \$34,800 to \$0. And yet the program is totally dependent on the appraisals to determine how much public money will be spent on each purchase. That being so, any credible means of improving the appraisal process or of guarding the appraisal process from appearances of impropriety, deserves careful attention by the SADC. Some suggestions which OIG believes will improve the process are set forth in the Recommendations section of this Report, below.

2. The Effect on the Value of Easements of Wetlands and Other Impediments to Development

As stated above, some of the criticisms of the program have questioned whether the State is purchasing development easements on property which could not be developed anyway, because of wetlands or other conditions. However, the SADC appraisal handbook requires appraisers to take wetlands and other site conditions into account in estimating the value of the property. Thus, where the State purchases a development easement on property containing wetlands, the cost of the

⁸¹ If the best or only use of a tract is as a building lot for just one house, and an area is excepted from the easement purchase for construction of that home, the value of the lot (with a house on it) restricted to agriculture is identical to its market value without restrictions. That is, its only use is as a large acreage building lot for one house.

easement should reflect the presence of the wetlands.

While construction generally cannot take place on wetlands due to restrictions in other laws, the fact that a land parcel contains a certain percentage of wetlands does not correlate directly to a percentage reduction in the development value of the land. Indeed, various development options, such as cluster zoning, can allow substantial development on land with a significant wetlands component. For example, a 100 acre parcel which is 50 percent wetlands, in an area zoned for one acre residential zoning, may not be limited to construction of only 50 houses on one acre lots in the upland area. Rather, the land may be subdivided so that each lot contains a percentage of the wetlands and the construction takes place in the area of each lot which is not wetlands. Where the land cannot be platted in a manner to distribute the houses on one acre lots, alternative construction may occur. For example, the municipality may allow 100 houses to be constructed in a cluster fashion on 50 acres, in exchange for the additional 50 acres being left as open space (averaging to the required one acre zoning). Thus, the development potential in the example of a 100 acre parcel in a one acre zoned area is not necessarily reduced proportionately (or even necessarily at all) where it is comprised of 50 percent wetlands.

As indicated, the State appraisal handbook requires the appraisers to consider the presence of wetlands. Appraisers will also consider existing zoning ordinances, or reasonably likely zoning changes, in estimating the unrestricted market value of a property. So long as the appraisers properly consider such factors as these, the appraisals should fairly estimate the market value of the property, including the wetlands.

Similar allegations that land cannot be developed have been made where land is comprised

of soils which limit its septic absorption capacity. Appraisals under the program, however, are uniformly required to adjust, where relevant, for septic limitations. In such circumstances, the use of septic systems may require more costly engineering design and construction. Thus, development may still be possible, but the land's value may be reduced because of the additional costs to build. The actual cost of special engineering design or construction remains, of course, merely an estimate by the appraisers, and any adjustment, accordingly, is dependent on the skill and judgment of the appraiser. In circumstances where sewers are available or may be extended to the site, that fact is a consideration generally adding to the development capacity, and hence value, of land. Thus, while both severe soils and wetlands may limit the development capacity of a tract, they do not uniformly do so and, in any event, adjustments are required to be made in the appraisals for any limitations

which do result. It bears repeating, however, that appraisals are more art than science and the extent to which these issues are reflected in an individual appraisal depends on the appraiser's expert opinion.

3. Land Unlikely to be Developed

Another criticism has been made that the State is paying to preserve land that would not otherwise be developed, although the land is capable of development. This criticism is generally addressed to situations where owners of large estates have preserved some of their lands surrounding the estate's residence. Critics have opined that, even if the State did not purchase a development easement, such acreage is unlikely to be developed anyway, since the owner has no intention of breaking up the family estate. Supporters of the use of the Farmland Preservation Program to purchase development easements on such properties have observed that land ownership can change

and any particular owner's current intention cannot guarantee that land will not be developed at some future point in time. As one environmental consultant has stated, "Asphalt is the last crop."⁸²

Still, in order to maintain the high level of public support the Farmland Preservation Program has enjoyed until now, the public policy of providing estate homeowners public funds as a payment to maintain their land in its current form due to a perceived threat of future development, should be reviewed by the SADC and the GSPT. For, even if the State did not expend governmental monies to purchase development easements on such land, these private landowners would have reasons to preserve their land from additional development. First, unless the estate home falls into significant disrepair, it is reasonable to anticipate that the next owner will purchase the estate as his home and will not want to have such structures as townhomes, condominiums or convenience stores directly abutting his house. In short, an estate home on two acres in a developed neighborhood is ordinarily of far less value than an estate home on substantially more acreage in an area of similar estates. Individuals who can afford to purchase such a home will probably do so in order to live there rather than in order to develop the surrounding land.

In addition, such estate landowners currently have substantial financial incentives to donate conservation easements on their land. *See I.R.C. §170(f)(3)(B)(iii) and §170(h).*⁸³ Donating such easements results in a substantial reduction in the value of the property, which in turn, can

⁸² South Carolina-based environmental consultant Coy Johnston, quoted in "Asphalt Is the Last Crop," *Forbes Magazine* (June 15, 1998).

⁸³ The conservation purposes for which easements can be donated are defined to include the preservation of farmland pursuant to a State or local governmental conservation policy. *I.R.C. §170(h) (4).*

substantially reduce estate taxes when the property is passed on to the owner's heirs. Further, this charitable tax deduction allows the donating landowner to offset up to 30% of his or her current adjusted gross income with the deduction, and the landowner has up to six years to use the entire deduction. *I.R.C.* §170.

4. Discussion

Both criticisms of the program -- that the State is purchasing the development rights to land which cannot be developed or which would not otherwise be developed -- can be addressed to a great extent through the appraisal process. To the extent land contains impediments to development, this fact should limit the value of the right to develop that land. In that the price paid for a development easement is equivalent to the value of the right to develop the land, an accurate appraisal should

mean that the State is not overpaying for land which would be difficult to develop.⁸⁴ In a situation involving an already existing estate home, an appraisal might conclude that the land's market value if available for development may not be any greater than its current market value as an estate home.

In such a case, a development easement would have no value, because the property would already be at its highest use, as one home surrounded by undeveloped acreage. This is because the value of the estate as a residence includes the fact that the acreage is part of the estate home and that, as a result, other housing or businesses are kept beyond the bounds of the estate acreage. In the ordinary

⁸⁴ The State and counties do not share precisely the same interest in the prices paid for development easements. Indeed, in documents obtained from one county the CADB members voiced concern that low easement values were "injurious to the reputation of the program and thus its ability to attract enrollment." After the board members expressed their opinion that the appraisals received were too low, the staff person to the board stated that she "would transmit the Board's dismay with the values." There is no indication whether the board's dismay with the low appraisals resulted in any change in the appraisals.

case, restricting a potentially subdivisible parcel to agricultural use renders it less valuable on the open market than it would be if its market value were unrestricted. In the case of an estate home, however, the value of the house itself may be the primary factor in establishing the value of the entire parcel. Thus, an estate home on 85 acres may have a market value of \$5 million. If one were to calculate the potential maximum value of the property if vacant and available for development, that value may not exceed the \$5 million value it currently holds. Accordingly, a development easement would have no value and should not be purchased.

Those cases in which the estate home is not constructed until after the surrounding land has been preserved, however, present a more difficult appraisal problem. In such cases, it is not as easy for the appraiser to consider the effect of the construction on the value of the land. Indeed, the appraiser may not know of the landowner's plan to construct an estate home. Notwithstanding that the task may be difficult, the program needs to develop procedures to uniformly consider the effect on the "after" value of constructing estate homes as the "farmhouse" on preserved lands, as well as the effect of this practice on farming itself. An individual who intends to make a living primarily from farming the land will not be able to afford to purchase such a tract in the future.⁸⁵ OIG's review uncovered instances of new estate homes being constructed on excepted areas within preserved land. In addition, several of the current applicants to the program are not farmers, but have purchased acreage with the intent to construct rural residences on their tracts of land. Selling an easement to

⁸⁵ The acreage on which to construct the estate house is excepted from the sale of the easement. This means that the State is not paying for the acreage on which the house is constructed and the owner is not limited to agricultural uses on the excepted acreage. Generally speaking, however, the excepted area remains a part of the preserved tract and must be sold with it rather than subdivided from it. Thus, to purchase preserved estate acreage for agricultural purposes means that a farmer would have to be able to afford the estate home, not just the acreage restricted to agriculture use.

the program on the excess acreage around their residence reimburses such individuals for some of their home's construction costs.⁸⁶

Because the funds to purchase development easements come from the taxpayers, the probability that an estate home tract will be further developed is a proper consideration in deciding whether to pay an owner not to develop that acreage surrounding his home. Given that preserving the viability of agriculture as an industry is required under our Constitution as the basis for purchasing easements on specific farmland, the inclusion of estate acreage in the program should receive a hard policy review by those implementing the program and by our lawmakers.⁸⁷ Indeed, the Garden State Preservation Trust Act requires that such policy issues be addressed by the GSPT as part of its report to the Legislature evaluating the progress being made on achieving the constitutional objectives. *N.J.S.A.* 13:8C-25.

C. Development Pressure and Rising Prices

OIG observed that particularly high per acre expenditures were often made to purchase land in the hands of developers. Imminence of development is an important factor in prioritizing development easement purchases under the Farmland Preservation Program because the land is

⁸⁶ See, for example, the review of the easement purchases on the DiDonato property in Mercer County and the Sorbello property in Gloucester County in the Appendix to this Report.

⁸⁷ There is no legal requirement that the land owner maintain any minimal level of agricultural productivity on the land after it has been preserved. In order to be eligible for application to the Farmland Preservation Program, land must be sufficiently devoted to agriculture so as to obtain the Farmland Tax Assessment in the first place. That is, it must be at least five acres in size and produce at least \$500 in gross farm income a year. But after the easement has been purchased, the owner is free to remove the land from agricultural use altogether; he or she simply may not develop it. Most owners of large tracts of land, however, elect to maintain sufficient agricultural activity on their land (that is, at least \$500 in annual gross income) to receive the reduction in property taxes accorded by the Farmland Assessment Act.

viewed as lost forever to farming once developed. However, once land is approved for subdivision or when sewer service is available to it, the price for the land escalates rapidly. The later in the development process an easement purchase is made, the higher, generally speaking, will be the price. One can reasonably assume that the motivation of a landowner who has gone to the expense and trouble of obtaining subdivision and development approvals, and who then opts to sell the land to the Farmland Preservation Program, is economically, rather than altruistically based. Thus, it may be that the land is no longer financially feasible to develop. Under such circumstances, one may question why appraisal values are elevated based on its anticipated development. Where real or perceived development pressures lead to substantial increases in the price of development easements, it may be that some land is simply too expensive to justify purchasing through the program and other land should be sought instead.⁸⁸ It may also be that more price negotiating should be occurring in situations where the land is held by a developer or land speculator who no longer finds it sufficiently beneficial to develop the land.

The strong interest of municipalities in halting what they view as financially disastrous overdevelopment can lead to land prices so high that -- if paid in a broad range of purchases -- the

⁸⁸ It must be remembered that the government does not own land on which a development easement is purchased and the public has no right of access to the land. Thus, at some cost point, the public's need for "open space" may be better served by outright purchase than by merely obtaining a development easement. As land values rise, the value of land restricted to agricultural use does not rise proportionately. That is, the value of agricultural land is constrained by its ability to produce agricultural income. Where land values rise, the cost of purchasing land in fee simple and of purchasing development easements will both rise, and at some point there may be rather minimal monetary difference to the State between owning the land and owning only an easement on the land. On the other hand, unlike land used in agricultural production, in areas of large acreage estates, there may be little or no difference between the unrestricted and restricted market value of the acreage and, thus, little or no value to a development easement. *See* Discussion in previous section.

monies available for preservation would soon be wholly depleted with an insufficient amount of farm acreage preserved. For example, while the average certified easement price in Burlington County ranges between \$2,500 and \$4,500 per acre, in the 1999 funding round easement values of \$24,785 and \$23,100 per acre were certified on two Burlington County farms, the Fieldstone Farm and the Stokelan Farm.⁸⁹ The costs to preserve the 155 acre Stokelan Farm and the 70 acre Fieldstone Farm in Medford Township were driven so high by a *Mount Laurel II* builder's remedy lawsuit.⁹⁰ The

⁸⁹ The price actually paid for the easement on the Stokelan Farm -- \$19,815 per acre -- represented a significant discount from the \$23,100 per acre easement price certified by the State review appraiser.

⁹⁰ See *Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel*, 92 N.J. 158 (1983) (*Mount Laurel II*).

plaintiff in the *Mount Laurel II* lawsuit asserted a plan to construct high density housing units on the farmland. A synopsis of this transaction is included in Appendix II to this Report.

It is instructive to consider the effect which paying such prices could have on the State's financial ability to meet its goal of preserving 500,000 acres of farmland. The Garden State Preservation Trust plans to spend \$423 million to preserve farmland during the first five years of the program.⁹¹ The SADC has advised OIG that the statewide average easement value in 1999 was \$3,848 per acre. Using the 1999 average price in a rough estimate, \$423 million would be enough money to preserve between 137,427 and 183,196 acres during those five years.⁹² The price of the easement on the Stokelan Farm was approximately five times the statewide average. Thus, choosing to buy an easement on that farm, at that price, is a choice to spend available resources five times as fast as purchases at or near the statewide average, or, in other words, to preserve one-fifth as much land with that money as would purchases at or near the statewide average price. Given an average certified easement value in Burlington County of, at its highest, \$4,500 per acre, the money spent to preserve 155 acres in Medford would be enough to preserve five times as many acres purchased

⁹¹ GSPT, "*Report to the Governor and Legislature*" (July 2000) at 68, Table 19. While the GSPT's Report does not contain a ten-year plan, OIG was advised that the GSPT anticipates spending over \$600 million on farmland preservation over the ten years of the program.

⁹² It is reasonable to assume, however, that the average price will change over time. Further, this discussion assumes that all of the \$423 million would be spent in the county grant program, in which the State money is leveraged with county contributions, and the State share of the easement cost typically ranges between 60 and 80 percent of the total easement cost. [$\$3,848 \times .6 = \$2,309$. $\$423,000,000 \div \$2,309 \text{ per acre} = 183,196 \text{ acres}$.] [$\$3,848 \times .8 = \$3,078$. $\$423,000,000 \div \$3,078 \text{ per acre} = 137,427 \text{ acres}$.] In fact, the State will also spend some of this money on direct State easement purchases, in which the State pays the entire easement cost, and on grants to nonprofit organizations, in which the State share is generally 50%. In addition, the SADC will acquire some land in fee simple, in which case the State initially pays the entire acquisition cost, imposes a development easement, and then recovers some of that cost by selling the property restricted to agricultural use.

at an average price in the county. This discussion illustrates the imperative of selecting properties for preservation in accordance with advance planning, and not in response to litigation.

Planning has always been the cornerstone of New Jersey's Farmland Preservation Program and is the prerequisite to achieving the State's long term policy goal of a viable agricultural industry. State law now encourages municipalities to plan for the preservation of farmland. In 1999, the Legislature established a farmland preservation planning incentive grant (PIG) program.⁹³ Under this program, a municipality may obtain block grants from the SADC to fund local farmland preservation. To be eligible, a municipality must identify a project area of multiple farms that are reasonably contiguous, establish a source of funding for farmland preservation, and prepare a farmland preservation plan. The municipality must develop a multi-year plan for the purchase of multiple farms in a project area. The SADC determines suitability for funding easement purchases under the PIG program based on "whether the project area provides an opportunity to preserve a significant area of reasonably contiguous farmland that will promote the long term viability of agriculture as an industry in the municipality."⁹⁴ Municipalities are encouraged to work with adjoining municipalities to protect agricultural areas of sufficient size to support the industry.⁹⁵

Use of planning incentive grants requires a municipality to plan for land preservation on the basis of which areas may contribute to the industry of agriculture, rather than merely respond on an individual basis to an immediate threat of development. While the *effect* of farmland preservation

⁹³ See *N.J.S.A.* 4:1C-43.1. Counties may also be eligible to receive funding under the planning incentive grant (PIG) program.

⁹⁴ *N.J.S.A.* 4:1C-43.1e.

⁹⁵ *N.J.S.A.* 4:1C-43.1d.

may be that communities avoid the increased costs associated with development, the purpose of farmland preservation, under our Constitution, is not to halt development but to maintain agriculture as a viable industry in New Jersey. With this required purpose in mind, the purchase of development easements on private land should contribute to the viability of agriculture. In the absence of a tract's contribution to agriculture, communities might more appropriately elect not to pay a landowner to maintain his or her land in its current condition. In the alternative, communities might consider preserving other farmland or the outright purchase of lands for open space through the Green Acres Program. In the latter circumstances, unlike in the case of the purchase of a development easement, the public has the use of the land paid for by the government. Additional use of Planning Incentive Grants, which provide municipalities funds to preserve large blocks of land as part of State-approved long term planning, rather than *ad hoc* responses by a municipality, may assist in keeping the Farmland Preservation Program focused on its long established mission of supporting the industry of agriculture.

D. Valuations of Development Easements

As noted above, when development pressures are perceived, the cost of preserving farmland can escalate dramatically. Although the values set in the case of the Stokelan and Fieldstone farms were substantially greater than that of any other development easements purchased in Burlington County, those values reasonably conformed to the county-obtained appraisals of those tracts. Yet, merely two years earlier, the farmer-owners of the Stokelan Farm had entered a contract to sell the farm to a development company for \$12,500 per acre. The difference between the asking sale price of the owners and the price paid only two years later by the township -- \$12,500 per acre versus

\$28,145 per acre -- provides cause for concern. Given that the development company had not obtained any planning or zoning approvals for the property, the reason for this difference is unclear -- that is, whether the owners had significantly undervalued their property, whether the development value of the land had risen dramatically in the intervening two years, or whether the county-level appraisals of the land overstated its true value. An objective method to evaluate the accuracy of the appraisals of easement values is needed but appears currently unavailable. Other development easement values in Burlington County are in fact substantially lower, but relate to land in areas with lower land prices than Medford Township.⁹⁶ Indeed, the Stokelan and Fieldstone Farms are the only tracts in Medford Township which have been preserved through the Farmland Preservation Program to date. In seeking to evaluate easement prices, OIG looked to the SADC fee simple purchase program to ascertain whether the data from that program could provide any objective information for comparison. Burlington County, of course, is not the only county where some specific easement sales are markedly higher than the usual easement values in the county.

In both the SADC's direct easement purchase program and its fee simple program, the State hires the appraisers. Under the fee simple program, the SADC will purchase a farm in fee simple (that is, buy it outright), impose a development easement on the property and then sell it at auction

⁹⁶ OIG also obtained data on land purchases made by the Green Acres Program. The Green Acres and farmland markets differ, so direct comparisons are generally inappropriate. Because Green Acres purchases are often made for conservation purposes, the land may not be as developable as farmland and, thus, could be substantially less valuable. Between 1995 and 2000, seven fee simple purchases of land in Medford Township were made by the Green Acres Program. Three of those purchases were less than an acre in size and three were for parcels between one acre and three acres in size. The other tract was 55 acres. The prices paid for the land in Medford by the Green Acres Program range from \$350 per acre to \$8,654 per acre.

to an interested purchaser as a preserved farm.⁹⁷ Because this is an infrequent procedure, there is extremely limited data from which to draw conclusions, and no statistically accurate trends can be identified. Nevertheless, the data from fee simple purchases raise interesting questions about the values ascribed to development easements, although the data provide no answers.⁹⁸

Recently, in the county grant program, certified values of development easements on two six-acre parcels, both located in Lower Township, Cape May County, were established at \$23,000 per acre (1999 funding round) and \$17,100 per acre (2000A funding round).⁹⁹ Each farm was the only applicant to the Farmland Preservation easement purchase program from Cape May County in its funding round. There was no Cape May County submission to the easement purchase program in the 2000B funding round. Between 1994 and 1998, the average certified easement value in Cape May County has varied between a low of \$1,304 per acre (the 1997 funding round) and a high of \$3,905 per acre (the 1995 funding round). Thus, easement values most recently set, during the 1999 and 2000A funding rounds, are far beyond the previous easement values in Cape May County.¹⁰⁰

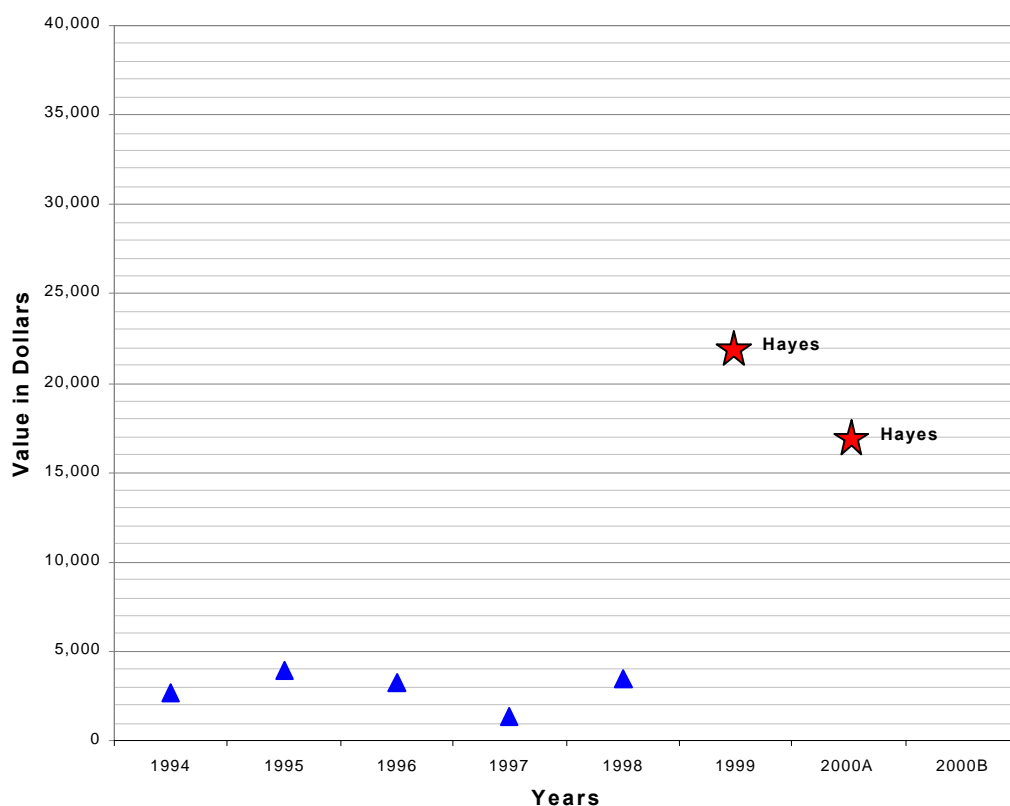
⁹⁷ A farmer who wishes to sell his land and retire or an individual who inherits a farm would generally not be interested in applying to the easement purchase program because this would not alter their ownership of the land. The SADC's fee simple program can be used to preserve farmland in such cases.

⁹⁸ The data on fee simple purchases was provided to OIG by the SADC.

⁹⁹ All data on easement values was obtained from SADC records.

¹⁰⁰ The average price paid for development easements in Cape May County throughout the years of the program, calculated from all closings on easement sales through October 6, 2000, is \$2,651 per acre. As of that date, however, closings on the easement sales of the two six-acre parcels in Lower Township had not yet occurred. Cape May County recently purchased a development easement on 13.7 acres in Lower Township (West Cape May) owned by a Cape May CADB member for approximately \$26,500 per acre. The transaction was submitted to the SADC for reimbursement.

See Table 4, following page. The certified easement values were, as required, supported by two county-level appraisals obtained on the property. Although each easement price set is in conformance with the appraisals, there is a vast difference between the average easement price in the county and that of the two small tracts in Lower Township. More particularly, there is a noteworthy difference between those values and the cost of a fee simple purchase by the SADC on



another property in the same township.

Table 4: Cape May County Certified Easement Value Per Acre

= Average certified easement values per acre, excluding the Hayes transactions.

= Average value of the Hayes easement transactions.

The Mattera Farm, also located in Lower Township, was a fee simple acquisition by the SADC in 2000. The almost 82 acre property had been enrolled in the eight-year easement program. Under that program, the landowner obtains the benefit of government cost-sharing for water and soil conservation projects on the property.¹⁰¹ The government obtains the right of first refusal over



¹⁰¹ Through the eight-year program, the State only obtains assurance that the property will not be developed for a period of eight years. Nevertheless, the State's expenditures for soil and water conservation projects on the tract may contribute to assuring that the property is preserved

the property; that is, if the landowner wishes to sell the property while it is enrolled in the eight-year program, the State is given the opportunity to purchase the property at the price offered to the landowner by the third party. In the case of the Mattera Farm, the owner had agreed to sell the farm to a developer. The State exercised its statutory right of first refusal and purchased the property by meeting the developer's offer to buy the farm for \$480,000. Thus, the State obtained ownership of the Mattera Farm for just under \$6,000 per acre. The State has imposed a development easement on the property and planned to sell it as a preserved farm in March 2001, although the results of that sale were not obtained by OIG in time to include in this Report. The fee simple value paid by the State, less the amount recouped from sale of the preserved parcel at auction, will be the price paid to impose a development easement on this property. In any event, there is a substantial difference between the values of \$23,000 and \$17,100 per acre merely to impose development easements on the other Lower Township farms, leaving them privately owned, and the \$6,000 per acre paid by the State to own the Mattera farm outright.¹⁰² The value of a development easement is expected to reflect the difference between the market value of a property (in the Mattera case, the price a developer was willing to pay for the property and which the State actually paid, *i.e.*, approximately \$6,000 per acre) and its value restricted to agriculture. After paying \$6,000 per acre for this property,

as a farm permanently. The landowner is responsible for 50% of the costs of such projects. It can be expected that a landowner who spends money to improve his land for farming use is seeking to maintain the property as a farm.

¹⁰² During 1999 and 2000, some properties were purchased in Lower Township by the Green Acres Program. As noted above, the value of land purchased by Green Acres, because conservation may be the purpose of the purchase, may be substantially lower than land purchased through the Farmland Preservation Program. In 1999, the Green Acres Program purchased 155 acres in Lower Township, Cape May, at a per acre cost of \$10,976. In 2000, the Green Acres Program purchased 34 acres in Lower Township at a per acre cost of \$4,084. The Green Acres purchases were made in fee simple.

the State will recoup through the auction process what is deemed to be the residual value of the property as restricted to agricultural use.

The SADC has purchased only two farms in fee simple in Burlington County, and both purchases were made in 1998. The SADC obtained ownership of each farm for a cost of approximately \$6,000 per acre. The SADC imposed a development easement on each farm and then sold them at auction as preserved farms, receiving \$3,930 per acre for one and \$3,480 per acre for the other (documentation of the land's agricultural or "after" value). Thus, the average cost of obtaining development easements on these two Burlington County farms in 1998 was approximately \$2,550 per acre.¹⁰³ In Burlington County, however, the average easement sale price in the county grant program, for closings on easement sales through October 6, 2000, was \$4,332 per acre. In the 1997 and 1998 funding rounds, the time period most relevant to the two fee simple sales, the average certified easement values were \$4,241 and \$4,489, respectively.

OIG also compared SADC fee simple purchases and easement purchases in Cumberland and Salem Counties. The SADC purchased three farms in Cumberland County, in 1990, 1997 and 2000. The prices paid by the SADC to own these farms was \$6,887¹⁰⁴ per acre (1990), \$2,800 per acre (1997) and \$3,206 per acre (2000). The farms purchased in 1990 and 1997 have been sold at auction

¹⁰³ The cost of imposing the easements includes the closing and other costs related to the purchase, as well as costs related to auctioning the same property. Thus, while the State's purchase price for each property was approximately \$6,000 per acre and the sale proceeds were \$3,930 and \$3,480 per acre, the actual easement cost is somewhat greater than the difference between the two numbers (\$2,070 and \$2,520, respectively) because the costs of acquisition and sale are factored in and increase the net easement costs.

¹⁰⁴ The farm purchased in 1990 was located in Vineland City. It appears that land values are higher in Vineland City than in most other locations in Cumberland County.

as preserved farms, for \$4,034 and \$1,326 per acre, respectively. The farm purchased in October 2000 has not yet been sold.¹⁰⁵ The net easement costs of the 1990 and 1997 farms are, respectively, \$2,986 and \$1,119 per acre.¹⁰⁶ The average easement price paid in Cumberland County from the beginning of the Farmland Preservation Program through October 2000 closings is \$1,809 per acre. The average certified value of development easements in Cumberland County during the 1997 funding round was \$1,825 per acre. The average certified easement price during funding round 2000B in Cumberland County was \$1,631 per acre.

Seven farms in Salem County have been purchased in fee simple by the SADC, in 1990, 1994, 1996, two in 1999 and two in 2000. Five of these have been sold at auction as preserved farms. The average net easement cost for the five farms which have been sold as preserved farms is \$1,722 per acre. The average price paid to purchase easements in Salem County through October 2000 closings is \$1,789 per acre.

One would anticipate that the net costs of imposing development easements through the fee simple program would reflect similar values ascribed to development easements by appraisals conducted for the easement purchase program, and one would anticipate that, as development pressures are reflected in the easement purchase program, they would also appear in the fee simple purchase program. This is not always the case, however, as indicated above.

¹⁰⁵ Average certified easement values for Cumberland County were \$2,320 per acre in the 2000A funding round and \$1,631 per acre in the 2000B funding round.

¹⁰⁶ The average of these two net easement costs, weighted with the acreage of the two tracts, was approximately \$1,373 per acre, because the less valuable tract was more than 373 acres and the Vineland City property was only approximately 59 acres. Generally speaking, large acreage tracts command a lesser per acre price.

In appraising the value of a development easement, one is attempting to ascertain the market value of property, as well as its value restricted to agriculture. This value can only be estimated, in accordance with the skill and judgment of the appraiser. Because of the small size of the fee simple sampling, as well as the uniqueness of any land deal, it is not possible to draw any solid conclusions from the data about the causes of these price disparities. Nonetheless, the data do support two conclusions: first, the GSPT should reassess the appraisal procedures used in the Farmland Preservation Program, and recommend to the Legislature and the SADC reasonable means to improve the accuracy and objectivity of the appraisals; second, whenever the SADC submits to the GSPT a proposed easement purchase with a price that far exceeds the usual prices in the county, the GSPT must question both the root causes of the price and the wisdom of the purchase, in order to guard against premature depletion of the funds earmarked for the one million acre goal.

E. Identifying Issues and Recommending Solutions: The Role of the Garden State Preservation Trust

The Legislature created the Garden State Preservation Trust not only to administer the funding for open space purchases, but also to oversee the operations of the State's open space preservation program and recommend any beneficial changes in the program. The Legislature assigned the Trust oversight responsibilities in two areas: the program's functioning in general, and individual preservation purchases. The discussion of issues in this Report demonstrates the need for the GSPT to fulfill its oversight responsibilities as an on-going process, if the State's open space expenditures are to continue to garner public support and confidence.

The Legislature created the GSPT in the Garden State Preservation Trust Act, in 1999.

Under that Act, the Trust is responsible for overseeing the State's overall progress toward the goal of preserving one million acres of open space, and for regularly assessing the need to alter the laws or procedures in order to better achieve that goal. Under the Garden State Preservation Trust Act, every two years the Trust

shall prepare and submit to the Governor and the Legislature a written report, which shall: . . . Describe the progress being made on achieving the goals and objectives of [the 1998 constitutional amendment] and this act with respect to the acquisition and development of lands for recreation and conservation purposes, the preservation of farmland, and the preservation of historic properties, and provide recommendations with respect to any legislative, administrative, or local action that may be required to ensure that those goals and objectives may be met in the future[.] [N.J.S.A. 13:8C-25.]

In addition to taking a broad view of the State's progress toward its open space goals, the GSPT is also responsible for monitoring the individual projects recommended for funding by the Green Acres, Farmland Preservation, and Historic Preservation Programs. Under the Garden State Preservation Trust Act, the GSPT reviews the lists of projects recommended for funding by each of those three programs. The GSPT may delete recommended projects from the lists, but may not add its own. *N.J.S.A.* 13:8C-23. Once the GSPT has deleted any projects which it does not recommend for funding, it submits its approved lists to the Legislature and requests appropriations to fund the approved projects. Thus, the Garden State Preservation Trust Act requires the GSPT to exercise

oversight of the individual transactions recommended by the various programs, as one of the several checks and balances built into the overall open space program.

The GSPT's discretion is not absolute, however. The Act establishes a procedure to resolve disagreements between the GSPT and the programs on particular projects. First, the GSPT is to discuss the project with the program staff.¹⁰⁷ If there continues to be a disagreement, the GSPT is to delete the project from the list of approved projects for that funding round. The program will then re-submit the project in the next funding round, with a written statement of its reasons for recommending it. The GSPT will submit the project, along with any others approved in that round, to the Legislature, with a written statement of its reasons for not recommending the project. *N.J.S.A.* 13:8C-23d. Thus, the ultimate decision on disputed projects rests with the Legislature (and the Governor through the veto process).

The Garden State Preservation Trust Act imposes on the GSPT the responsibility to perform both a high-level overview of the program, and an individual review of the merits of each proposed preservation project. OIG interviews, however, reveal that, when it was first created, the GSPT may not have had sufficient resources and time to fulfill both of these roles. The GSPT staff has consisted of a director and two staff persons. This staff is responsible for receiving the recommendations from the programs and transmitting them to the GSPT board members, who vote on the projects. Also, OIG was advised that for approximately the first six meetings of the GSPT, the paperwork regarding the matter to be considered at a trust meeting would be received

¹⁰⁷ According to interviews with GSPT board members, the GSPT has on occasion conditioned its approval on the appropriate program's providing additional information to support its recommendation. Consultation with the appropriate program has resolved most, if not all, of GSPT's reservations about individual projects.

approximately three or four days prior to the meeting. OIG was further advised that some board members felt this short time frame did not give them sufficient time to thoroughly review the information, formulate relevant questions, and to have those questions answered, before the board met to vote on the lists of recommended projects.

According to interviews with current board members and staffers, both of these situations have improved. OIG is advised that the GSPT has recently received increased funding, from \$150,000 to \$277,000, for staff.¹⁰⁸ Now, information on projects recommended by the program are submitted to members of the GSPT seven to ten days in advance. These changes appear to be for the better. If they are not sufficient, however, the GSPT must take it upon itself to request funding for a larger staff from the Legislature, and to require more timely, or thorough submission of information from the programs.

The need for the GSPT to continuously scrutinize the functioning of the open space programs and the trends affecting the prices and supply of land is clear. This Report has identified a series of issues: whether the procedures for hiring appraisers, adopted under a now discarded cost sharing arrangement, continue to be the best the State could adopt; whether the purchase of development easements for the construction of estate homes is a good policy choice; and whether the perceived impact of development pressures on easement prices are considered appropriately when individual transactions are recommended for funding. OIG does not suggest that these are the only issues confronting the open space preservation program. Nor do we suggest that any of these issues will be news to the program staff or to the GSPT members and staff who work in these areas day in and

¹⁰⁸ In addition, the GSPT receives money for education. In the current budget, OIG is advised that the Trust is allocated \$500,000 for this purpose.

day out. The existence of these issues, however, demonstrates the need for the GSPT to keep a weather eye on the programs' operations, and "provide recommendations with respect to any legislative, administrative, or local action that may be required to ensure that those goals and objectives [including the easement purchase goal of assuring a viable agricultural industry] may be met in the future[.]" *N.J.S.A.* 13:8C-25.

III. RECOMMENDATIONS

A. Introduction

In passing the Garden State Preservation Trust Act, the Legislature made the following findings:

The Legislature finds and declares that enhancing the quality of life of the citizens of New Jersey is a paramount policy of the State; that the acquisition and preservation of open space, farmland, and historic properties in New Jersey protects and enhances the character and beauty of the State and provides its citizens with greater opportunities for recreation, relaxation, and education;

The Legislature further finds and declares that agriculture plays an integral role in the prosperity and well-being of the State as well as providing a fresh and abundant supply of food for its citizens; that much of the farmland in the State faces an imminent threat of permanent conversion to non-farm uses; and that the retention and development of an economically viable agricultural industry is of high public priority.

The Legislature further finds and declares that there is growing public recognition that the quality of life, economic prosperity, and environmental quality in New Jersey are served by the protection and timely preservation of open space and farmland [N.J.S.A. 13:8C-2.]

The Garden State Preservation Trust was established in order to further the purposes overwhelmingly supported by the public approval of the 1998 constitutional amendment, and to advance the policies and goals established in the Garden State Preservation Act.

New Jersey's open space preservation program, as administered by the Garden State Preservation Trust, is well run. It contains substantial checks and controls, as is appropriate for an expenditure program this large. For example, the Farmland Preservation Program, which has been the focus of this Report, draws upon the expertise and knowledge of the County Agriculture Development Board members to evaluate the contribution to agriculture made by individual farms, when the CADB selects properties for preservation. The professional staff of the State Agriculture

Development Committee use an established set of criteria to rank applicant farms in priority order. Properties are appraised not once, but twice, and then the appraisals are reviewed by a third professional appraiser. Over all this, the members of the Garden State Preservation Trust evaluate individual proposed transactions, and oversee the State's progress toward the established policy goals.

For 40 years, the citizens of New Jersey have given strong support to efforts to preserve open space and farmland. But recent allegations of ethical violations and questions about prices being paid for some development easements led Attorney General John J. Farmer, Jr., to ask OIG to undertake a program review, to determine whether conflicts of interest or corruption were undermining the program's integrity, and to recommend any changes which may improve the operation of the program. Any government program which expects to spend well over a billion dollars of the taxpayers' money should be reviewed – regularly, and by objective persons – to help assure that the program spends the money wisely,¹⁰⁹ and that it continues to earn public support through its performance, so that this and future generations may benefit from an untainted legacy of one million acres of open space. In that spirit, OIG offers the following recommendations to the Garden State Preservation Trust and other policy-makers.

B. Enhanced Ethical Requirements

It is a natural human tendency to seek to favor those with whom one is close, and the small size of the farming community could lead to an unspoken and perhaps unintended tendency of

¹⁰⁹ Indeed, in another of the controls built in to the program, the Legislature required the State Auditor to audit GSPT's expenditures periodically, to determine whether those funds have been spent on costs consistent with the constitutionally and statutorily established goals of the program. *N.J.S.A.* 13:8C-22.

CADB members to favor other members of the board when reviewing preservation applications. Indeed, in one county which touted its adherence to a strict code of ethics, requiring that members not merely abstain but leave the premises while a discussion or vote on an application in which they had an interest was taking place, one member said that he wanted to stay on the board until his brother's farm came up for consideration. Were there no informal advantage to being on the board when an application were pending, his comment would have made no sense. Accordingly, OIG recommends that the recent SADC ethical changes, requiring that a member of a CADB step down before his own application or that of a member of his immediate family living in his same household is made, should be expanded. Clearly, board members cannot necessarily regulate the timing of submission of applications by business associates or family members who are not in their households. Therefore, OIG recommends that, where a board member has a relationship with an applicant which would present the appearance of impropriety if he or she were to participate in consideration of the application, the applicant should be directed by the CADB to apply to the SADC direct easement purchase program. Additionally, the regulation should prohibit a CADB member from applying to the program for a period of one year from the date of termination of his service on the CADB.

A CADB, of course, is not the only local authority whose members might benefit financially from the program the authority administers. The maximum penalty for violators of the Local Government Ethics Law is, however, imposition of a civil fine of \$500. OIG recommends that this law, and its counterpart governing State-level employees, be amended to increase the existing civil penalties to a range of not less than \$500 nor more than \$10,000.

OIG also recommends that the Legislature add criminal penalties for purposeful or knowing violations of those ethics laws. OIG suggests that such a violation be a third degree crime. The enacting statute should clearly state that it does not preclude prosecution under any other criminal law which may be applicable to the facts, such as official misconduct in violation of *N.J.S.A. 2C:30-2*, or any applicable civil law.¹¹⁰

C. Enhanced Openness

Continued public support of the Farmland Preservation Program can be enhanced by the openness of the program's operations. Accordingly, public knowledge of and evaluation of the program should be encouraged.¹¹¹ In a similar vein, appraisals should be available for public inspection at the earliest feasible time, since each purchase involves the expenditure of the public's funds. OIG is advised that the SADC now makes appraisals available for public inspection as soon as the owner has agreed in writing to the sale. Where a county is the direct purchaser of an easement, appraisals should similarly be made available as soon as the landowner agrees to sell the easement to the county, regardless of whether or not the county thereafter seeks reimbursement by submitting the property to the SADC. Allowing public scrutiny of purchases in the time between the agreement to purchase and confirmation of the sale could well assist the GSPT members in identifying

¹¹⁰ The elements of the crime of official misconduct would be distinct from a purposeful or knowing violation of the Local Government Ethics Law. Nevertheless, in some factual circumstances, both provisions could be simultaneously violated by the same actions.

¹¹¹ OIG's review of particular easement sales was rendered more difficult and time-consuming because the SADC did not at that time, have a database recording its prior transactions by block and lot number. OIG is advised that the SADC is recording its current easement purchases in this fashion and is undertaking to produce a revised database of program purchases which can be tracked in this same fashion.

additional questions regarding specific purchases and in exercising its collective judgment regarding the benefits of those purchases.

D. Obtaining Appraisals

The two county-level appraisals obtained on each property are the most important factor not only in determining the amount of money the public will pay for each development easement, but also for assuring that the public receives fair value for its money. As discussed more fully above, the seller of an easement to the SADC (whether a county or a farmer) must present a formal offer to sell at a price within the range established by the two county appraisals. The State certified easement value must also fall within that range, and offers to sell at prices below the certified value not only move the property up on the SADC priority ranking, but also increase the State's share of the easement costs, up to 80 percent. Also, the two on-site appraisals are the primary protection against overpaying for development easements on property with restricted development potential. Therefore, the State has a strong interest in ensuring that the appraisal process is as good as it can reasonably be.

The State contributes the largest share of the money used to purchase development easements in the county grant program, between 60 and 80 percent of the total price. It is an inherent weakness in the system to have the principal purchaser prohibited from obtaining its own appraisals of the property values. It appears that the current arrangement is a relic which has outlived the reason for its being. When the easement purchase program began in 1983, the State and the counties shared the easement costs equally. Under that arrangement, it was determined that the counties would select the appraisers. However, the law was later changed to increase the State's share of the cost, to between 60 and 80 percent, without correspondingly increasing the State's ability to ensure the

appropriateness of these costs. *See P.L. 1988, c.4, see also N.J.A.C. 2:76-6.11d.*

Because the State contributes the most money, it has the greatest financial incentive to ensure that the money is being spent wisely. Because the State share of the cost comes from taxpayers throughout the State, State government has a responsibility to take reasonable steps to ensure that the taxpayers' money is spent prudently. Further, the State has a policy incentive to ensure that the taxpayers' money is spent appropriately. The State has committed itself to preserving one million acres of open space throughout the entire State. Overvalued purchases anywhere deplete resources and undercut the State's financial ability to achieve this statewide goal. For example, the GSPT plans to spend \$423 million on farmland preservation over the first five years of the program.¹¹² Recently an easement value of \$23,000 per acre was certified in Cape May County. If easements were consistently purchased at that price, the entire \$423 million would be used up to preserve only about 30,652 acres, leaving the State well off track of the 500,000 acre goal,¹¹³ and in violation of the intent of voters, the Governor and legislators who overwhelmingly supported the constitutional amendment.

¹¹² GSPT, *"Report to the Governor and Legislature"* (July 2000) at 68, Table 19. While the GSPT's report does not contain a ten year plan, OIG was advised that the GSPT anticipates spending over \$600 million on farmland preservation over the ten years of the program.

¹¹³ Of course, not all easements will be purchased at such prices: the statewide average easement cost in 1999 was \$3,848. This example is a rough illustration of a simple point: it will be a challenging task to preserve 500,000 acres with \$600 million. Therefore, every reasonable step must be taken to assure that only appropriate prices are paid. The example in the text contains the following assumptions. First, it assumes that all of the \$423 million would be spent in the county grant program, in which the State money is leveraged with county contributions. In fact, the State will also spend some of this money on direct State purchases, in which the State initially pays the entire acquisition cost, imposes a development easement, and then recovers some of that cost by selling the property restricted to agriculture. Second, this example assumes the State share of the easement cost is consistently 60 percent. [$\$23,000 \times .6 = \$13,800$. $\$423,000,000 \div \$13,800 \text{ per acre} = 30,652 \text{ acres}$.] If the State share is assumed to be 80 percent, as it sometimes is, the entire \$423,000,000 would be gone after only about 22,989 acres are preserved. [$\$23,000 \times .8 = \$18,400$. $\$423,000,000 \div \$18,400 \text{ per acre} = 22,989 \text{ acres}$.]

In contrast, the counties can find themselves in something of a crosscurrent. On the one hand, county governments have a financial responsibility to their own taxpayers to spend their money wisely within that county. And counties may also have clear policy goals of preserving farms in particular geographic areas or in particular amounts. On the other hand, higher appraisal values can benefit a county. The higher the appraised value, the more the seller (either a county or a farmer) can afford to discount its bid price from the certified value. This increases the State's percentage share of the cost, thereby decreasing the county's share of the cost (although it may or may not increase the county's absolute cost). It also moves the property up on the SADC's ranking, thereby advancing the county's policy goal of preserving the property.¹¹⁴ Also, county governments, both the Boards of Chosen Freeholders which typically hire the appraisers, and the CADBs, are more likely than the SADC to have close ties to the farmers in that county, and thus are more likely to want to protect the farmers' interests. For example, in documents obtained from one county the CADB members voiced concern that low easement values were "injurious to the reputation of the program and thus its ability to attract enrollment." After the board members expressed their opinion that the appraisals received were too low, the staff person to the board stated that she "would transmit the Board's dismay with the values." While it is appropriate for all those involved in the program to be concerned that the prices are fair to farmers, fairness, by definition, demands equal protection for the interests of the taxpayers throughout the State.

¹¹⁴ As indicated by documents obtained from one county, by controlling the "bid down," the county affects each applicant's final ranking and, accordingly, its ability to qualify for SADC funding. The county further observed that the amount of the bid-down not only affects the final SADC ranking and qualification of the applicant for State funding, "it also greatly impacts on the total cost of the acquisition from the county. Accordingly, the goal in bid-down is to only bid-down enough to ensure State funding in order to minimize county costs."

During its review of the program, OIG was advised that, on one occasion, an appraiser had felt pressured by the chairperson of a CADB to alter his appraisal.¹¹⁵ Where a county or municipality first determines to purchase an interest in land for an agreed upon price and then seeks an appraisal of the land's value, the county or municipality would receive substantial criticisms from their constituencies if the appraised value was insufficient to support the price paid. Thus, if an appraiser is aware of the price already paid by those who have hired him, whether through documents reviewed or through statements made to him, the appraiser may perceive that a particular result is desired. It is clear that an appraiser whom the county does not feel to have done a good job will probably not be rehired by that county. Accordingly, in some instances, there may be a subtle, perhaps unintended, pressure on appraisers to find not just an accurate value, but a value within a particular range.

Appraisals for farmland easement purchases generally rely on the comparable sales method of calculating value. Thus, the appraiser locates sales of other properties for development purposes to determine the market value of the land being evaluated. The appraiser considers sales of land restricted to agriculture (where available) to determine the agricultural value of the land being appraised. The selection of comparable properties is a rather subjective task. Furthermore, because no two tracts of land can be exactly alike, the appraiser must adjust the value downward or upward depending on his or her determination of how the tracts compare. While the types of differences for which adjustments need be made are established by the comprehensive SADC regulations (for

¹¹⁵ OIG was further advised that the appraisal had not been altered. Although that appraiser was not rehired by the county, this decision appeared to be mutual.

example, amount of wetlands, type of soils, the type of area in which the tract is situated), the adjustment process is even more subjective than the initial selection of comparables.

The appraisal files reveal occasions where the State appraiser did not feel the county-level appraisals could be rejected, based on the difficult standard required to reject appraisals, but, just as clearly, felt some discomfort in certifying a value within the range established by those same county appraisals.¹¹⁶ OIG also has noted an extremely high value attributed to some easements as well as a wide disparity in values between some properties in the same areas. For example, during the 1999 easement purchase round, the SADC certified an easement value of \$23,000 per acre for the six acre Hayes property in Lower Township in Cape May County. The average Cape May County easement purchased through October 2000 closings was \$2,651 per acre. The location of the Hayes property appears to account for at least some of the vast difference between the Hayes easement value and the average county easement value.

Similarly, Medford Township agreed to purchase the 155 acre Stokelan and 70 acre Fieldstone farms in fee simple for approximately \$28,145 and \$26,965 per acre, respectively, in settlement of litigation. The price to be paid for the properties, as well as Burlington County's informal agreement to reimburse Medford a percentage of the development easement cost,¹¹⁷ were

¹¹⁶ See, e.g., the Novasack Brothers land in Cape May County, the Visalli farm in Gloucester County, the Radvany property in Mercer County and the Ware farm in Salem County. Each of these easement purchases is synopsisized in the Appendix to this Report.

¹¹⁷ Burlington County also agreed to submit the farms to the SADC for reimbursement of the easement purchase costs and to share with Medford Township the grant money received from the State.

determined before the properties were appraised.¹¹⁸ Two appraisals were subsequently conducted. The unrestricted market value of the Stokelan Farm was estimated in the appraisals at between \$26,560 and \$27,000 per acre. The unrestricted market value of the Fieldstone Farm was between \$28,570 and \$30,000 per acre. The certified easement values on the Stokelan and Fieldstone Farms, respectively \$23,100 and \$24,785 per acre, were far above the usual value of development easements in Burlington County¹¹⁹ but, as required, were within the range of easement values established by the county-hired appraisers.

Members of CADBs interviewed by the State generally expressed the view that the county's direct hiring of appraisers tended to assure that the appraisers selected were familiar with local land values. There is, however, no reason to simply assume that the SADC would be unable to hire appraisers with appropriate experience. OIG staff observed that counties tended to repeatedly hire the same appraisers from the State list. This fact not only would contribute to appraisals by persons

¹¹⁸ The agreement in settlement of litigation indicated that Medford would purchase the Fieldstone and Stokelan farms for a total of \$6.25 million and was conditioned on the county's subsequently documenting its informal agreement with the township to pay a portion of the development easement value (up to a maximum of \$3 million) and on the township council adopting a bond ordinance to fund the purchase. The county, in turn, would not determine the actual amount it would contribute until after it obtained appraisals of the properties. The effect of these contingencies was that the township would have had an opportunity to withdraw from the settlement agreement if the township was not satisfied with the county contribution.

¹¹⁹ Land values in Medford Township are in fact substantially higher than in the six townships where Burlington County had previously targeted its farmland preservation efforts. However, late in 1996, the owners of the Stokelan Farm had been willing to sell their *entire* interest in the properties (not just a development easement) for approximately half of the easement value eventually certified on the properties. An intermediary who claimed an intent to develop the farms obtained the difference between the price the owners accepted for their land and the price Medford Township paid for the land. OIG staff did not ascertain the portion of the per acre price which the owner of the Fieldstone Farm had sought or received in the sale, but were informed that the owner had agreed to a percentage of the final value obtained by the intermediary rather than a specific per acre amount.

familiar with county land values but, to the extent the appraiser may have overestimated some values, would also contribute to a perpetuation of inflated appraisals.

During the course of the State's review appraisal, questions have sometimes arisen about the appraisals which had been conducted at the county level. On many of those occasions, State appraisers have been unable to speak directly with the appraisers hired by the county. In such circumstances, the appraisers have indicated that they view the county as their client and have refused to communicate directly with the State review appraiser. In a recent funding round, eight appraisals from one county were rejected by the State. It appears that some of these rejections would not have been necessary if direct communication between the initial and review appraiser had been available. The application and approval process may be streamlined if the State were given the responsibility of hiring the appraisers, or if the State employed some additional appraisers who could regularly conduct appraisals on a statewide basis. In situations where the accuracy of either of the two on-site appraisals is in question, the State should be able to elect to conduct a third appraisal.

During the first five years of this ten year program, the GSPT expects to spend approximately \$423 million taxpayer dollars to preserve farmland. Hundreds of millions more will be spent in the second five years. No business in the private sector would spend \$423 million on real estate purchases without hiring its own appraisers to protect its interest. Surely, the taxpayers do not deserve less consideration than the shareholders of private businesses.

Having the State hire the appraisers would increase the costs to the State. However, the State already shares the costs of the appraisals with the counties. Furthermore, since the State will be spending hundreds and hundreds of millions of taxpayer dollars, it is simple prudence to invest some money up front to ensure that this money is spent well.

The easement purchases are meant to advance the established policy goals of maintaining agriculture as a viable industry, and preserving open space. Every purchase of agriculturally unproductive acreage undercuts this goal, because the money used for that purchase is expended without obtaining an adequate contribution to agriculture in return. Every dollar overspent on a property appraised too high undercuts the one million acre goal in the same way. If the State is to achieve its stated policy objective, it must ensure that the appraisal system, which is art not science, is the best it can be. Thus, OIG recommends that the Legislature amend the Agriculture Development and Retention Act, at *N.J.S.A. 4:1C-31*, and that the SADC correspondingly amend its rules, so that the State hires the two on-site appraisers. OIG believes the State's direct oversight of the appraisal process is the most efficacious way of ensuring that the State receives top value for its open space buck.

While State policy makers consider possible improvements to the appraisal system, they should also consider enhancing quality assurance procedures in the program. Having appraisers selected from the State approved list, and using review appraisers in addition to the two on-site appraisers, are good procedures to ensure the quality of the appraisals. It may be that the State could do more. The State could select some percentage of appraisals by each on-site appraiser for in-depth on-site review.

The State is planning to spend some \$600 million of taxpayer money to preserve the viability of agriculture as an industry. The appraisals are the key to determining how much is spent on each purchase. Therefore, the appraisals are the key to ensuring the taxpayers get proper value for their money, and to achieving the goal of preserving one million acres of open space. The credibility of

the program depends on the credibility of the appraisals. Reasonable suggestions to improve the

quality of the appraisals merit close attention by the Legislature, the Garden State Preservation Trust and the State Agriculture Development Committee.

E. Purchase of Easements on Estate Homes

The already substantial benefits achieved under New Jersey's open space preservation efforts will become more profound as they continue. This may provide the Garden State Preservation Trust and Legislature an opportunity to consider whether the public favors or disfavors the expenditure of tax dollars to purchase development easements on land surrounding estate homes. As discussed in this Report, when hobby farmers construct estate homes in the midst of preserved lands, they effectively remove the land from the agricultural industry, because farmers who make their living from the land cannot afford to buy the preserved farm with an estate home as the farmhouse. The GSPT should determine whether its application and appraisal procedures gather sufficient information so that the appraisers, and all those who must evaluate an application, are sufficiently informed about all factors relevant to valuation, including the likelihood that a tract will be operated as a farm, will be developed, or will be maintained as an estate. The likelihood of development is an established criterion in evaluating preservation applications. The Legislature should also consider whether the public's investment in development easements would be protected by placing right of first refusal in deeds of easement, which would allow the State to purchase preserved land at its agricultural value, rather than the land's value as part of an estate home. The right would be triggered whenever the property owner seeks to sell the property. The public invests in development easements to sustain agriculture as an industry in this State. That investment in agriculture would

be better protected if, at the time the estate is offered for sale, the house itself were allowed to be severed from the surrounding estate grounds, and those preserved acres sold or leased to farmers.

F. Composition of the County Agriculture Development Boards

The Agriculture Retention and Development Act, passed in 1983, requires that County Agriculture Development Boards be comprised of seven voting members, with four of those members to be farmers and three to be members of the general public.¹²⁰

The county boards require the participation of persons with expertise in farming, both to evaluate the contribution to agriculture of land which is being considered for the Farmland Preservation Program, and to mediate Right to Farm disputes. By the same token, the general public members of County Agriculture Development Boards can contribute a necessary and useful different point of view. OIG's review of the membership of the boards reveals an occasional tendency to include as general public members persons who either are farmers or whose family members are farmers.¹²¹ The requirement that three of the members of County Agriculture Development Boards be members of the general public, rather than farmers, should be more carefully enforced, with CADBs not permitting membership by more than a simple majority of farmers and requiring that the general public members have no farming background or ties.

G. The Need for Continuous Oversight by the Garden State Preservation Trust

¹²⁰ Pre-existing county boards with greater membership were "grandfathered." Accordingly, the CADBs in counties such as Hunterdon and Burlington have a larger membership. Their membership must consist of a simple majority of farmers, and a minority of non-farmers.

¹²¹ For example, a general public member of the Ocean CADB preserved his own 9.83 acre farm through the Farmland Preservation Program.

As the State increases its efforts to serve the public interest by preserving New Jersey's dwindling open space, the State must correspondingly increase its vigilance to assure that the public funds expended to preserve private lands are spent wisely and that appropriate value is received. The

GSPT has the statutory responsibility to pass judgment on individual transactions before referring them to lawmakers for funding, as well as the statutory responsibility to keep lawmakers apprised of the State's progress toward achieving the twin goals of preserving one million acres of open space and preserving agriculture as an industry.

The Garden State Preservation Trust Act contemplates that the Trust will exercise this judgment before it recommends individual projects to the Legislature for funding. The Act provides: "The trust shall review the list [of projects submitted by the SADC] and may make such deletions, but not additions, of projects therefrom as it deems appropriate and in accordance with the procedures for such deletions pursuant to subsection d. of this section, whereupon the trust shall approve the list." *N.J.S.A.* 13:8C-23b. Thus, the Act contemplates that the Trust will exercise its judgment in disapproving certain proposed acquisitions, "as it deems appropriate[.]" *Id.*

Subsection d., referred to above, establishes a procedure under which the Trust reviews the "merits and validity" of any project it has deleted from a list of proposed projects with the agency which submitted that list, (that is, the SADC for farmlands projects and the DEP for Green Acres projects.) If the Trust and the agency continue to disagree on the merits of the project after this review, the Trust is to submit the project to the Governor and the Legislature "together with a written report setting forth the rationale of the Garden State Preservation Trust in recommending deletion of the project from the proposed [funding] legislation and the rationale of the [agency] ... in

recommending retention of the project in the proposed legislation.” *N.J.S.A.* 13:8C-23d. While the Act leaves the ultimate decision on all proposed funding to the Governor and the Legislature, the Act reposes responsibility in the Trust to review the “merits and validity” of the acquisitions proposed by the various agencies; to disapprove those proposed projects which it believes should not be funded; and to provide the Governor and Legislature with a written report of additional information with which to weigh the pros and cons of projects the merits of which are in dispute between the Trust and the sponsoring agency.

In keeping with this statutory scheme, OIG recommends that the GSPT ensure that a parcel contributes to the viability of the agricultural industry, and that true value is being received for the money expended, before advising the Legislature to fund that parcel. The quality criteria in the SADC regulations enable the SADC to objectively rank the parcels in terms of their quality as farmland. The appraisals (perhaps modified as suggested in this Report) are the key to ensuring that the prices paid are fair given the market. But the Trust is uniquely situated in the process to pass judgment on whether the projects recommended by the various agencies would be wise investments for the State.

Thus far in the program, the GSPT has recommended funding nearly all, if not all, of the parcels on the lists presented by the SADC, as far the available funding would go. There is merit to the idea of buying all the parcels, in the order in which they have been ranked for quality and price. That land is available now, and it may not be available in the future. If the GSPT were to strike a parcel from the list, it would run the risk that the parcel may be developed, or may become even more expensive to acquire in the future. On the other hand, there is a downside to this strategy.

Buying all the parcels presented, in rank order to the extent of available funding, has resulted in funding some parcels at prices far above the county norm. Just as there is merit to the idea of buying all parcels in rank order, there is also merit to the observation that choosing to pay \$23,000 per acre for an easement depletes resources six times as fast as does paying the statewide average price, and thereby limits the number of acres that can be preserved with the available funds. The GSPT should not recommend to the Legislature that it fund a purchase that far exceeds the county norm unless, based on the collective expertise of the Trust members, it believes that the particular parcel makes such a significant contribution to open space and the agricultural industry, as to justify choosing it over many more acres elsewhere. The GSPT can add value to the process through the considered exercise of both its collective expertise and its independent judgment.

There may be too many open space transactions for the GSPT members to individually review each one in detail.¹²² The GSPT can and does rely on the experienced staff of the SADC and the Green Acres program. The GSPT has advised OIG that its members have questioned transactions in which the price greatly exceeded the county norm, or in which the two on-site appraisal values differed widely. If in the opinion of the Trust members these factors assist them in determining which particular transactions to sharply focus on, the GSPT should formalize this practice by having the SADC regularly note for them transactions with such disparities or other unusual facts.

¹²² The Trusts consists of five public members and four cabinet officers or their designees, namely, the Commissioner of Environmental Protection, the Secretary of Agriculture, the Secretary of State and the State Treasurer. The public members are paid \$150 per day for each day on which the member actually attends a Trust meeting, but are not paid for the time they spend reviewing the lists of proposed transactions in preparation for those meetings.

Similarly, OIG recommends that the synopsis of each transaction which the SADC currently provides to the GSPT include a summary of the percentage of wetlands and severe soils, the zoning and the availability of sewer service at each property, as these factors can lead to appropriate questions about the valuation of the easement. With their expertise in land preservation, the GSPT and SADC may have additional ideas on how to identify those transactions meriting more than usual scrutiny and judgment by the GSPT members.

The GSPT should continue to track the costs of State purchased farmland easements as the program moves into its later years, and should suggest to the Legislature any changes that will make open space purchases more cost effective. The GSPT must be creative and open in considering various ways to allocate the State's open space monies in order to best achieve the State's open space goals. For example, it must be recalled that the Farmland Preservation Program is a voluntary program. If in the future the supply of farmland whose owners are willing to permanently restrict its development potential falls short of the 500,000 acre goal, or if the cost of buying farmland preservation easements reaches a point in the future at which their expense is not a smart investment for the State, consideration should be given to changing the percentages of monies spent yearly on Green Acres transactions and Farmland Preservation transactions. That is, at that point consideration should be given to providing more money for Green Acres purchases. As the program matures over the course of the next eight years, it will require regular reassessment of how well it is achieving its overall goals. This is part of the purpose in having the expenditures administered by the GSPT, and it is the GSPT's statutory responsibility.

Reviewing the cost and the appropriateness of individual transactions, and reviewing the overall price trends and the supply of open space lands, do not require the GSPT to duplicate the

work or the role of DEP's Green Acres staff, the SADC or the CADBs. Indeed, in fulfilling its statutory responsibility to provide oversight, the GSPT does, and should continue to, draw upon the expertise and experience of those programs' staff members. While there is coordination between Green Acres and the SADC, with the Deputy Administrator of Green Acres sitting on the SADC, it is neither fair nor realistic to rely on staff in one program or the other to recognize and to recommend, for example, that their program deserves a lesser share of the available funding in a

given year. If the GSPT needs additional staff in order to perform its oversight function, it must request funding from the Legislature for additional staff positions. OIG supports increasing GSPT staff levels if needed to ensure that the transactions it recommends to the Legislature reflect the considered, independent judgment of the GSPT. With the State poised to spend over one billion dollars on open space preservation, it is simple prudence to invest some money up front to ensure that taxpayer monies are not squandered at any point in the programs' life. GSPT must ensure that its own resources are sufficient to fulfill its role of maintaining the broader public view of the needs of the Green Acres and Farmland Preservation Programs, making any appropriate changes to its procedures, and recommending appropriate action by others, to keep the State on course to achieve its legally mandated goals of sustaining a viable agricultural industry and of preserving one million acres of open space.

APPENDIX I

Note:

Appendix I comprises individual documents from various agencies and is in the process of being scanned and converted for web viewing.

A. Comments of Robert C. Shinn, Commissioner
Department of Environmental Protection

B. Comments of Christopher Daggett, Chair and
William Brooks, Jr., Vice-Chair on behalf of the
Garden State Preservation Trust

C. Statement of Arthur R. Brown, Jr.,
Secretary of Agriculture
Chairman, State Agriculture Development Committee (SADC)

C1. Comments on behalf of the SADC

C2. Comments on behalf of the SADC re Appendix II

D. Response to Comments by OIG